

ATTACHMENT 19

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 IN RE: PROCESSED EGG PRODUCTS :
4 ANTITRUST LITIGATION :
5 -----: MDL No. 2002
6 THIS DOCUMENT APPLIES TO: : 08-MD-02002
7 ALL ACTIONS :

8 -- HIGHLY CONFIDENTIAL --

9 Wednesday, June 26, 2013

10
11 Continued videotaped deposition of
12 GENE W. GREGORY, taken at the offices of
13 Pepper Hamilton LLP, 3000 Two Logan Square,
14 18th & Arch Street, Philadelphia,
15 Pennsylvania 19103, beginning at 9:03 a.m.,
16 before LINDA ROSSI RIOS, RPR, CCR and Notary
17 Public.
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<p style="text-align: right;">324</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 QUINN EMANUEL URQUHART & SULLIVAN</p> <p>4 BY: STEIG D. OLSON, ESQUIRE</p> <p>5 and</p> <p>6 LEE TURNER-DODGE, ESQUIRE</p> <p>7 51 Madison Avenue, 22nd Floor</p> <p>8 New York, New York 10010</p> <p>9 212-849-7152</p> <p>10 212-849-7000</p> <p>11 steigolson@quinnemanuel.com</p> <p>12 leeturnerdodge@quinnemanuel.com</p> <p>13 On behalf of the Direct Purchaser</p> <p>14 Plaintiffs</p> <p>15</p> <p>16 MILBERG LLP</p> <p>17 BY: CHARLES SLIDDERS, ESQUIRE</p> <p>18 One Pennsylvania Plaza</p> <p>19 New York, New York 10119</p> <p>20 646-733-5727</p> <p>21 cslidders@milberg.com</p> <p>22 On behalf of the Indirect Purchaser</p> <p>23 Plaintiffs</p> <p>24</p> <p>25 HAUSFELD, LLP</p> <p>BY: JEANNINE M. KENNEY, ESQUIRE</p> <p>1604 Locust Street</p> <p>2nd Floor</p> <p>Philadelphia, Pennsylvania 19103</p> <p>215-985-3270</p> <p>jkenney@hausfeldllp.com</p> <p>On behalf of Direct Purchaser Plaintiffs</p> <p>JENNER & BLOCK, LLP</p> <p>BY: RICHARD P. CAMPBELL, ESQUIRE</p> <p>353 North Clark Street</p> <p>Chicago, Illinois 60654</p> <p>312-923-2818</p> <p>rcampbell@jenner.com</p> <p>On behalf of Kraft Foods Global, Inc.</p>	<p style="text-align: right;">326</p> <p>1 MARCUS & SHAPIRA LLP</p> <p>2 BY: MOIRA E. CAIN-MANNIX, ESQUIRE</p> <p>3 One Oxford Center</p> <p>4 35th Floor</p> <p>5 Pittsburgh, Pennsylvania 15219</p> <p>6 412-338-3344</p> <p>7 cain-mannix@macus-shapira.com</p> <p>8 On behalf of Giant Eagle, Inc.</p> <p>9</p> <p>10 GIBSON, DUNN & CRUTCHER LLP</p> <p>11 BY: JASON C. MCKENNEY, ESQUIRE</p> <p>12 2100 McKinney Avenue</p> <p>13 Dallas, Texas 75201-6912</p> <p>14 214-698-3279</p> <p>15 jmckenney@gibsondunn.com</p> <p>16 On behalf of Defendant,</p> <p>17 Cal-Maine Foods, Inc.</p> <p>18 PORTER, WRIGHT, MORRIS & ARTHUR</p> <p>19 BY: DONALD M. BARNES, ESQUIRE</p> <p>20 1919 Pennsylvania Avenue, NW</p> <p>21 Suite 500</p> <p>22 Washington, D.C. 20006</p> <p>23 202-778-3056</p> <p>24 dbarnes@porterwright.com</p> <p>25 On behalf of Rose Acre Farms</p> <p>KASOWITZ BENSON TORRES & FRIEDMAN, LLP</p> <p>BY: MARGARET ZIEMIANEK, ESQUIRE</p> <p>101 California Street</p> <p>San Francisco, California 94111</p> <p>415-655-4335</p> <p>mziemianek@kasowitz.com</p> <p>On behalf of Nu-Cal Foods, Inc.</p>
<p style="text-align: right;">325</p> <p>1 FAEGRE BAKER DANIELS</p> <p>2 BY: RYAN M. HURLEY, ESQUIRE</p> <p>3 300 North Meridian Street</p> <p>4 Suite 2700</p> <p>5 Indianapolis, Indiana 46204-1750</p> <p>6 317-237-1144</p> <p>7 ryan.hurley@faegrebdc.com</p> <p>8 On behalf of Midwest Poultry Services</p> <p>9</p> <p>10 EIMER STAHL, LLP</p> <p>11 BY: VANESSA G. JACOBSEN, ESQUIRE</p> <p>12 224 South Michigan Avenue, Suite 1300</p> <p>13 Chicago, Illinois 60604</p> <p>14 312-660-7604</p> <p>15 vjacobsen@eimerstahl.com</p> <p>16 On behalf of Moark LLC, and Norco Ranch,</p> <p>17 Inc.</p> <p>18 DECHERT LLP</p> <p>19 BY: CHRISTINE C. LEVIN, ESQUIRE</p> <p>20 Cira Center</p> <p>21 2929 Arch Street</p> <p>22 Philadelphia, Pennsylvania 19104</p> <p>23 215-994-2421</p> <p>24 christine.levin@dechert.com</p> <p>25 On behalf of RW Sauder, Inc.</p> <p>PEPPER HAMILTON, LLP</p> <p>BY: JAN P. LEVINE, ESQUIRE</p> <p>WHITNEY REDDING, ESQUIRE</p> <p>and</p> <p>ROBIN SUMNER, ESQUIRE</p> <p>3000 Two Logan Square</p> <p>18th & Arch Street</p> <p>Philadelphia, Pennsylvania 19103</p> <p>215-981-4714</p> <p>215-981-4121</p> <p>215-981-4652</p> <p>levinej@pepperlaw.com</p> <p>reddingw@pepperlaw.com</p> <p>sumner@pepperlaw.com</p> <p>On behalf of United Egg Producers and the</p> <p>United States Egg Marketers</p>	<p style="text-align: right;">327</p> <p>1 BUCHANAN, INGERSOLL & ROONEY</p> <p>2 BY: SAMANTHA L. SOUTHALL, ESQUIRE</p> <p>3 Two Liberty Place</p> <p>4 50 S. 16th Street</p> <p>5 Suite 3200</p> <p>6 Philadelphia, Pennsylvania 19102</p> <p>7 215-665-3884</p> <p>8 samatha.southall@bipc.com</p> <p>9 On behalf of Hillandale Farms, Inc.,</p> <p>10 Hillandale Farms East, Inc., Hillandale</p> <p>11 Gettysburg LP and Hillandale Farms of Pa.,</p> <p>12 Inc.</p> <p>13</p> <p>14 BRIGGS and MORGAN</p> <p>15 BY: TROY HUTCHINSON, ESQUIRE</p> <p>16 2200 IDS Center</p> <p>17 80 South 8th Street</p> <p>18 Minneapolis, Minnesota 55402</p> <p>19 612-977-8415</p> <p>20 thutchinson@briggs.com</p> <p>21 On behalf of Sparboe Farms, Inc.</p> <p>22</p> <p>23 YODER KEATING MUETHING & KLEKAMP</p> <p>24 BY: BRYCE J. YODER, ESQUIRE</p> <p>25 One East Fourth Street</p> <p>Cincinnati, Ohio 45202</p> <p>513-562-1420</p> <p>byoder@kmlaw.com</p> <p>On behalf of Ohio Fresh</p> <p>WEIL, GOTSHAL & MANGES LLP</p> <p>BY: CARRIE M. ANDERSON, ESQUIRE</p> <p>1300 Eye Street, N.W.</p> <p>Suite 900</p> <p>Washington, D.C. 20005</p> <p>202-682-7231</p> <p>carrie.anderson@weil.com</p> <p>On behalf of Defendant, Michael Foods</p>

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<p style="text-align: right;">328</p> <p>1 TELEPHONIC APPEARANCES:</p> <p>2</p> <p>3 LOVELL STEWART HALEBIAN & JACOBSON LLP</p> <p>4 BY: MERRICK SCOTT RAYLE, ESQUIRE</p> <p>5 61 Broadway, Suite 501</p> <p>6 New York, New York 10006</p> <p>7 212-608-1900</p> <p>8 msrayle@sbcglobal.net</p> <p>9 On behalf the Indirect Purchaser Plaintiffs</p> <p>10</p> <p>11 CROWELL & MORING LLP</p> <p>12 BY: DOHA MEKKI, ESQUIRE</p> <p>13 590 Madison Avenue</p> <p>14 20th Floor</p> <p>15 New York, New York 10022</p> <p>16 212-803-4067</p> <p>17 dmekki@crowell.com</p> <p>18 On behalf of Daybreak Foods, Inc.</p> <p>19</p> <p>20 VERITEXT VIRTUAL APPEARANCES:</p> <p>21</p> <p>22</p> <p>23 BAKER & MCKENZIE LLP</p> <p>24 BY: PATRICK J. AHERN, ESQUIRE</p> <p>25 300 East Randolph Street</p> <p>Chicago, Illinois 60601</p> <p>312-861-3735</p> <p>patrick.ahern@bakermckenzie.com</p> <p>On behalf of Winn-Dixie, Inc.,</p> <p>Roundy's Supermarkets, Inc.,</p> <p>C&S Wholesaler Grocers, Inc., and</p> <p>H.J. Heinz Company, L.P.</p> <p>ALSO PRESENT:</p> <p>ROBERT MIRABELLA, Videographer</p>	<p style="text-align: right;">330</p> <p>1 E X H I B I T S (cont'd.)</p> <p>2</p> <p>3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>4</p> <p>5 Gregory-39 Animal Welfare Committee</p> <p>6 Meeting January 21, 2003</p> <p>7 Atlanta, Georgia Minutes,</p> <p>8 UE0153366 - UE0153368 394</p> <p>9 Gregory-40 2/3/03 Letter,</p> <p>10 MPS-00123260 & 00123261 397</p> <p>11</p> <p>12 Gregory-41 6/4/03 United Voices,</p> <p>13 UE0136174 - UE0136177 408</p> <p>14 Gregory-42 7/17/03 United Voices,</p> <p>15 UE0071388 - UE0071391 412</p> <p>16</p> <p>17 Gregory-43 7/23/03 Letter,</p> <p>18 NL003518 - NL003526 421</p> <p>19 Gregory-44 8/27/03 United Voices,</p> <p>20 UE0875279 - UE075289 436</p> <p>21</p> <p>22 Gregory-45 9/11/03 United Voices,</p> <p>23 UE0875297 - UE0875304 442</p> <p>24 Gregory-46 An Economic Perspective</p> <p>25 By: Gene Gregory,</p> <p>NL001233 - NL001237 449</p> <p>Gregory-47 11/12/03 United Voices,</p> <p>UE0753377 - UE0753385 492</p> <p>Gregory-48 11/13/03 Fax,</p> <p>NL01199471 - NL01199473 474</p> <p>Gregory-49 11/19/03 Letter,</p> <p>UE0944695 & UE0944696 479</p> <p>Gregory-50 12/5/03 Letter,</p> <p>MF0001880 & MF0001881 485</p> <p>Gregory-51 Various documents,</p> <p>MOARK0038387 - 0038396 486</p>
<p style="text-align: right;">329</p> <p>1 I N D E X</p> <p>2</p> <p>3 Testimony of: GENE W. GREGORY</p> <p>4 By Mr. Olson 339</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8</p> <p>9 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>10</p> <p>11 Gregory-33 3/17/02 E-mail,</p> <p>12 UE0174535 & UE0174536 346</p> <p>13 Gregory-34 UEP Board of Directors</p> <p>14 January 14-15, 2002</p> <p>15 Atlanta, Georgia minutes,</p> <p>16 UE0153426 - UE0153430 357</p> <p>17</p> <p>18 Gregory-35 3/25/02 United Voices,</p> <p>19 CM00407889 - CM00407892 366</p> <p>20 Gregory-36 Producer Committee for</p> <p>21 Animal Welfare March 26,</p> <p>22 2002 Chicago, Illinois</p> <p>23 Minutes,</p> <p>24 UE0153419 - UE0153422 379</p> <p>25 Gregory-37 UEP Board of Directors</p> <p>Conference Call April 3,</p> <p>2002 Minutes,</p> <p>UE0210657 & UE0210658 384</p> <p>Gregory-38 UEA Further Processors</p> <p>Animal Welfare Briefing</p> <p>Breakfast Caesars Palace</p> <p>-- Las Vegas, Nevada</p> <p>April 22, 2002 Minutes,</p> <p>MPS-00122892 & 00122893 390</p>	<p style="text-align: right;">331</p> <p>1 E X H I B I T S (cont'd.)</p> <p>2</p> <p>3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>4</p> <p>5 Gregory-52 12/5/03 Memorandum,</p> <p>6 NL000916 - NL000918 496</p> <p>7 Gregory-53 1/21/04 Letter,</p> <p>8 UE0199015 - UE0199029 499</p> <p>9</p> <p>10 Gregory-54 1/6/04 Packet of Letters,</p> <p>11 UE0661098 - UE0661130 512</p> <p>12 Gregory-55 2/10/04 Letter with</p> <p>13 attachments,</p> <p>14 NL002043 - NL002064 517</p> <p>15 Gregory-56 E-mail chain,</p> <p>16 UE0810722 & UE0810723 521</p> <p>17</p> <p>18 Gregory-57 Summary Of Meeting With</p> <p>19 National Advertising</p> <p>20 Review Board</p> <p>21 April 1, 2004 525</p> <p>22 Gregory-58 4/27/04 Letter,</p> <p>23 UE0218877 - UE0218881 531</p> <p>24</p> <p>25 Gregory-59 Producer Committee For</p> <p>Animal Welfare May 10,</p> <p>2004 Washington, D.C.</p> <p>Minutes,</p> <p>UE0153279 & UE0153280 540</p> <p>Gregory-60 5/2/04 United Voices,</p> <p>MPS-00066253 - 00066256 542</p> <p>Gregory-61 PowerPoint Presentation,</p> <p>UE0146041 - UE0146055 551</p> <p>Gregory-62 11/18/04 Letter,</p> <p>UE0176038 - UE0176040 558</p> <p>Gregory-63 11/18/04 Memo,</p> <p>UE0210450 561</p>

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<p style="text-align: right;">332</p> <p>1 EXHIBITS (cont'd.)</p> <p>2 - - -</p> <p>3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>4</p> <p>5 Gregory-64 E-Mail chain,</p> <p>6 NL0017442 564</p> <p>7 Gregory-65 11/23/04 United Voices,</p> <p>8 UE0368631 - UE0368636 567</p> <p>9</p> <p>10 Gregory-66 11/29/04 Letter,</p> <p>11 UE0176003 570</p> <p>12 Gregory-67 4/14/05 E-mail,</p> <p>13 UE0644788 572</p> <p>14</p> <p>15 Gregory-68 9/6/05 Letter,</p> <p>16 NL002442 - NL002444 583</p> <p>17 Gregory-69 E-mail chain,</p> <p>18 SF000312 - SF000322 584</p> <p>19</p> <p>20 Gregory-70 Producer Meeting In</p> <p>21 Minneapolis</p> <p>22 December 6, 2005,</p> <p>23 NL0217575 589</p> <p>24 Gregory-71 Various documents,</p> <p>25 MFI0005548 - MFI0005576 594</p> <p>26</p> <p>27 Gregory-72 E-mail chain,</p> <p>28 RWS 000027615 & 27616 601</p> <p>29 Gregory-73 E-mail chain,</p> <p>30 RWS 000015952 604</p> <p>31</p> <p>32 Gregory-74 E-mail chain,</p> <p>33 UE0808615 & UE0808616 614</p> <p>34 Gregory-75 10/20/06 Letter,</p> <p>35 UE0217823 - UE0217829 617</p> <p>36</p> <p>37 Gregory-76 E-mail chain,</p> <p>38 CM00727158 - CM00727162 630</p> <p>39</p> <p>40</p>	<p style="text-align: right;">334</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>4 Page Line Page Line</p> <p>5 (None)</p> <p>6</p> <p>7</p> <p>8</p> <p>9 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>10 Page Line Description</p> <p>11 (None)</p> <p>12</p> <p>13</p> <p>14 STIPULATIONS</p> <p>15 Page Line</p> <p>16 335 3-9</p> <p>17</p> <p>18</p> <p>19 QUESTIONS MARKED</p> <p>20 Page Line</p> <p>21 (None)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">333</p> <p>1 EXHIBITS (cont'd.)</p> <p>2 - - -</p> <p>3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>4</p> <p>5 Gregory-77 8/3/07 Letter,</p> <p>6 UE0218074 - UE0218076 634</p> <p>7 Gregory-78 E-mail chain,</p> <p>8 UE0804959 637</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">335</p> <p>1</p> <p>2 - - -</p> <p>3 (It is hereby stipulated and</p> <p>4 agreed by and among counsel that</p> <p>5 sealing, filing and certification are</p> <p>6 waived; and that all objections,</p> <p>7 except as to the form of the question,</p> <p>8 will be reserved until the time of</p> <p>9 trial.)</p> <p>10 - - -</p> <p>11 VIDEOGRAPHER: We are now on the</p> <p>12 record. Please note that microphones</p> <p>13 are sensitive and may pick up</p> <p>14 whispering and private conversations.</p> <p>15 Please turn off all cell phones or</p> <p>16 place them away from the microphones</p> <p>17 as they can interfere with the</p> <p>18 deposition audio. Recording will</p> <p>19 continue until all parties agree to go</p> <p>20 off the record.</p> <p>21 My name is Robert Mirabella,</p> <p>22 representing Veritext New York. The</p> <p>23 date today is June 26, 2013, and the</p> <p>24 time is approximately 9:03 a.m.</p> <p>25 This deposition is being held at</p>

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<p style="text-align: right;">336</p> <p>1 2 Pepper Hamilton located at Two Logan 3 Square, Philadelphia, Pennsylvania. 4 The caption of this case is In Re: 5 Processed Egg Products Antitrust 6 Litigation. This case is filed in the 7 United States District Court Eastern 8 District of Pennsylvania, Case Number 9 08-MD-02002, MDL Number 2002. This is 10 the continuing videotape deposition of 11 Gene Gregory. 12 At this time the attorneys 13 present and attending remotely will, 14 please, identify themselves for the 15 record and the parties they represent. 16 MR. OLSON: This is Steig Olson 17 from Quinn Emanuel Urquhart & Sullivan 18 for the Direct Purchaser Class 19 Plaintiffs. 20 MS. DODGE: This is Lee 21 Turner-Dodge also from Quinn Emanuel, 22 also for Direct Purchaser Class 23 Plaintiffs. 24 MR. CAMPBELL: Richard Campbell, 25 Jenner & Block for the Kraft</p>	<p style="text-align: right;">338</p> <p>1 2 Poultry Services. 3 MR. MCKENNEY: Jason McKenney 4 from Gibson, Dunn & Crutcher on behalf 5 of Cal-Maine Foods. 6 MS. ANDERSON: Carrie Anderson 7 with Weil, Gotshal & Manges on behalf 8 of Michael Foods. 9 MR. BARNES: Don Barnes, Porter 10 Wright on behalf of Rose Acre Farms. 11 MS. REDDING: Whitney Redding, 12 Pepper Hamilton on behalf of UEP and 13 USEM. 14 MS. SUMNER: Robin Sumner, 15 Pepper Hamilton on behalf of UEP and 16 USEM. 17 MS. LEVINE: Jan Levine, Pepper 18 Hamilton on behalf of UEP and USEM. 19 VIDEOGRAPHER: Is anybody 20 attending remotely? 21 MR. OLSON: Could we have 22 appearances from the phone, please? 23 MR. RAYLE: Merrick Rayle, 24 Lovell Stewart, Indirect Purchaser 25 Plaintiffs.</p>
<p style="text-align: right;">337</p> <p>1 2 plaintiffs. 3 MS. CAIN-MANNIX: Moira 4 Cain-Mannix from Marcus & Shapira for 5 plaintiff Giant Eagle. 6 MR. SLIDDERS: Charles Slidders 7 from Milberg LLP for the Indirect 8 Purchaser Plaintiffs. 9 MS. KENNEY: Jeannine Kenney 10 with Hausfeld, LLP for Direct 11 Purchaser Plaintiffs. 12 MR. HUTCHINSON: Troy Hutchinson 13 on behalf of defendant Sparboe Farms. 14 MS. SOUTHALL: Samantha 15 Southall, Buchanan, Ingersoll & Rooney 16 on behalf of Hillandale Farms, Inc., 17 Hillandale Gettysburg LP, Hillandale 18 Farms East, Inc. and Hillandale Farms 19 of Pa., Inc. 20 MS. ZIEMIANEK: Margaret 21 Ziemianek of Kasowitz Benson Torres & 22 Friedman on behalf of defendant Nu-Cal 23 Foods. 24 MR. HURLEY: Ryan Hurley with 25 Faegre Baker Daniels for Midwest</p>	<p style="text-align: right;">339</p> <p>1 2 VIDEOGRAPHER: Thank you. Our 3 court reporter, Linda Rossi 4 representing Veritext, will, please, 5 swear in the witness, and we can 6 proceed. 7 - - - 8 GENE W. GREGORY, after having 9 been duly sworn, was examined and 10 testified as follows: 11 - - - 12 EXAMINATION 13 - - - 14 BY MR. OLSON: 15 Q. Good morning, Mr. Gregory. 16 A. Good morning. 17 Q. How is your physical health 18 this morning? 19 A. I'll be fine. 20 Q. Mr. Gregory, has UEP to your 21 knowledge, ever had to pay money damages as a 22 result of a lawsuit? 23 A. You know, I sometimes get 24 confused as to what was a petition and a 25 lawsuit because there's been all this. I</p>

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<p style="text-align: right;">340</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 think that we paid a small amount of money in</p> <p>3 a case filed against us against Compassion</p> <p>4 Over Killing, I believe. And I think we paid</p> <p>5 State Attorney Generals. Seems to me like we</p> <p>6 settled that case for \$100,000, I think it</p> <p>7 was.</p> <p>8 Q. Are those the only occasions</p> <p>9 that come to mind when UEP paid money damages</p> <p>10 as a result of a lawsuit?</p> <p>11 A. That's the only ones I can</p> <p>12 recall. I don't think there's others, but</p> <p>13 I -- that's the only one that I can recall.</p> <p>14 Q. Now, are there rules in place</p> <p>15 that govern what happens when UEP -- or if</p> <p>16 UEP is found liable for money damages in a</p> <p>17 lawsuit, in other words, where that money</p> <p>18 comes from?</p> <p>19 A. How do we acquire the money to</p> <p>20 pay the settlement of that? Is that the</p> <p>21 question?</p> <p>22 Q. Better question.</p> <p>23 A. That simply has to come out of</p> <p>24 our -- those have to simply come out of our</p> <p>25 general funds.</p>	<p style="text-align: right;">342</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Your counsel is right. The specific question</p> <p>3 was, are there any provisions applicable to</p> <p>4 UEP of which you're aware where UEP members</p> <p>5 would be obligated to help UEP satisfy a</p> <p>6 judgment?</p> <p>7 A. You see, I'm having trouble</p> <p>8 here because we now have a special assessment</p> <p>9 for legal fees that is a condition of</p> <p>10 membership. I don't know how to avoid that,</p> <p>11 Jan.</p> <p>12 MS. LEVINE: No. That is a</p> <p>13 proper answer. My point is Mr. Olson</p> <p>14 is not asking you about any</p> <p>15 conversations with counsel about how</p> <p>16 to finance anything about the eggs</p> <p>17 litigation or really any other</p> <p>18 litigation. He's asking you</p> <p>19 procedurally, are there any rules or</p> <p>20 regulations that UEP has set up to --</p> <p>21 is there anything in your bylaws or</p> <p>22 any rules or regulations that --</p> <p>23 BY MR. OLSON:</p> <p>24 Q. Let me just ask the questions.</p> <p>25 But what your counsel is saying is true in</p>
<p style="text-align: right;">341</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is there a portion --</p> <p>3 A. When I say "our," I mean UEP</p> <p>4 general funds.</p> <p>5 Q. Is there a portion of --</p> <p>6 specific portion of the general funds they</p> <p>7 come from or is it a case-by-case basis?</p> <p>8 A. No. It's a case -- it was a</p> <p>9 case-by-case basis.</p> <p>10 Q. Are there any provisions of</p> <p>11 which you're aware where UEP members would be</p> <p>12 obligated to help UEP satisfy a judgment?</p> <p>13 A. Not to my knowledge until this</p> <p>14 case, we are --</p> <p>15 MS. LEVINE: Mr. Gregory, I</p> <p>16 advise you not to reveal any</p> <p>17 discussions with counsel about</p> <p>18 anything about this case. I think the</p> <p>19 question is procedurally in your</p> <p>20 bylaws or elsewhere, if I'm not</p> <p>21 mistaken. Mr. Olson is not asking you</p> <p>22 to reveal any conversations about</p> <p>23 payments in this case.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Let's start with my question.</p>	<p style="text-align: right;">343</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that I'm not asking you to tell me things</p> <p>3 that were told to you in confidence by your</p> <p>4 lawyers.</p> <p>5 A. Right.</p> <p>6 Q. That may be a hard distinction.</p> <p>7 If we need to take a break to address it, we</p> <p>8 can.</p> <p>9 A. No, I'm fine.</p> <p>10 Q. But let's see how we can do.</p> <p>11 So you referred to a provision</p> <p>12 put in place for a legal assessment from UEP</p> <p>13 members. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. When was that put into place?</p> <p>16 A. I think that it came about with</p> <p>17 the membership dues for 2009.</p> <p>18 Q. And are there any restrictions</p> <p>19 on what that legal assessment can be used</p> <p>20 for, to your knowledge?</p> <p>21 A. To my knowledge, no.</p> <p>22 Q. Are there any procedures that</p> <p>23 have been put in place to handle a situation</p> <p>24 where UEP would be found liable for an amount</p> <p>25 that's greater than it has as a result of</p>

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<p style="text-align: right;">344</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 those dues?</p> <p>3 MS. LEVINE: Again, I instruct</p> <p>4 the witness not to reveal any</p> <p>5 attorney-client privileged</p> <p>6 communications, and surely this</p> <p>7 witness is not a lawyer and cannot</p> <p>8 give a legal opinion about anyone's</p> <p>9 liability.</p> <p>10 Go ahead, Mr. Gregory.</p> <p>11 THE WITNESS: There has been no</p> <p>12 provisions put in place as to how to</p> <p>13 satisfy a settlement, if that's what</p> <p>14 you're asking.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. While you were president, did</p> <p>17 you give any thought to how that situation</p> <p>18 should be handled?</p> <p>19 MS. LEVINE: Same objection,</p> <p>20 that you are not to reveal any</p> <p>21 discussions with counsel or</p> <p>22 communications with counsel. If you</p> <p>23 can answer the question without really</p> <p>24 revealing that, you can. If you</p> <p>25 can't, just tell Mr. Olson.</p>	<p style="text-align: right;">346</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 ago, and we honestly do not know how</p> <p>3 we will be able to pay this if we're</p> <p>4 found liable, which we believe we are</p> <p>5 innocent. And given the opportunity</p> <p>6 to prove it, we think you ought to pay</p> <p>7 us for all the troubles you've caused</p> <p>8 us.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. So you haven't put into place</p> <p>11 any procedures to handle how a money judgment</p> <p>12 would be satisfied. Is that right?</p> <p>13 A. We have not.</p> <p>14 - - -</p> <p>15 (Exhibit Gregory-33, 3/17/02</p> <p>16 E-mail, Bates UE0174535 & UE0174536,</p> <p>17 was marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Let me hand you what we've</p> <p>21 marked as Gregory Exhibit 33. For the</p> <p>22 record, this is Bates stamped UE0174535</p> <p>23 through 36.</p> <p>24 Let me know when you've</p> <p>25 reviewed this document, please.</p>
<p style="text-align: right;">345</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: A situation like</p> <p>3 this has never happened to UEP before.</p> <p>4 And obviously when this happened, it</p> <p>5 has changed my life for the last five</p> <p>6 years. I have lived in total hell the</p> <p>7 last five years as a result of this.</p> <p>8 And, yes, I've spent a lot of time</p> <p>9 figuring out how we are going to be</p> <p>10 able to stay in business, maintain our</p> <p>11 membership and pay our bills.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Did you come to any conclusions</p> <p>14 about how the situation would be handled if</p> <p>15 UEP was found liable for a money judgment in</p> <p>16 this case?</p> <p>17 MS. LEVINE: Same instruction,</p> <p>18 Mr. Gregory, not to reveal any</p> <p>19 communications, requests of or advice</p> <p>20 from counsel in giving that answer.</p> <p>21 If you cannot answer without revealing</p> <p>22 such communications, you can tell Mr.</p> <p>23 Olson.</p> <p>24 THE WITNESS: We have exhausted</p> <p>25 insurance coverage that we had long</p>	<p style="text-align: right;">347</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. (Reviewing document.)</p> <p>3 I've read it.</p> <p>4 Q. Mr. Gregory, can you identify</p> <p>5 this as an e-mail you received from Jeff</p> <p>6 Armstrong on March 17, 2002?</p> <p>7 A. Yes.</p> <p>8 Q. And the e-mail includes a</p> <p>9 memorandum from the Scientific Advisory</p> <p>10 Committee.</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall receiving this</p> <p>13 memorandum?</p> <p>14 A. I do -- I mean, it reflects my</p> <p>15 memory, yes.</p> <p>16 Q. So Mr. Armstrong writes a memo</p> <p>17 on behalf of the committee and he reports to</p> <p>18 you that several members of the committee had</p> <p>19 asked that it be sent to you. Correct?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. Do you know which members of</p> <p>22 the committee wanted these points to be</p> <p>23 communicated to you?</p> <p>24 A. I think this is a follow up to</p> <p>25 the question that you asked yesterday and the</p>

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<p style="text-align: right;">348</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 fact that we had some members of our -- of</p> <p>3 our Scientific Advisory Committee by now</p> <p>4 serving as consultants or advisors for the</p> <p>5 Food Marketing Institute, and that we, in our</p> <p>6 meetings with FMI then, we mistakenly</p> <p>7 included the names of the Scientific Advisory</p> <p>8 Committee which I think likely created an</p> <p>9 embarrassing point for some members of the</p> <p>10 Scientific Committee that were serving and</p> <p>11 working for FMI. And they felt that that</p> <p>12 might impair their point of independence.</p> <p>13 In regard to the things that</p> <p>14 they say here --</p> <p>15 Q. Well, the question --</p> <p>16 MS. LEVINE: Let Mr. Gregory</p> <p>17 finish the answer.</p> <p>18 MR. OLSON: No, no, no. I want</p> <p>19 an answer to my question.</p> <p>20 MS. LEVINE: No. Mr. Olson,</p> <p>21 he's mid sentence. Let him finish.</p> <p>22 MR. OLSON: He's not answering</p> <p>23 the question.</p> <p>24 MS. LEVINE: It doesn't matter.</p> <p>25 You asked him. It's his answer.</p>	<p style="text-align: right;">350</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Really? There is a</p> <p>3 gentleman here that is 72 years old</p> <p>4 that has been in -- that has an injury</p> <p>5 and he is mid sentence. Let him</p> <p>6 finish. It's common courtesy.</p> <p>7 MR. OLSON: I'm not going to</p> <p>8 engage you with this, but he's not</p> <p>9 answering the question. I just want</p> <p>10 an answer to the question.</p> <p>11 MS. LEVINE: He'll answer the</p> <p>12 question, but let --</p> <p>13 MR. OLSON: Good.</p> <p>14 MS. LEVINE: Don't interrupt the</p> <p>15 gentleman mid sentence.</p> <p>16 Continue, Mr. Gregory.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Do you know what the question</p> <p>19 is, Mr. Gregory?</p> <p>20 MS. LEVINE: Go ahead,</p> <p>21 Mr. Gregory. You can finish your</p> <p>22 thought.</p> <p>23 THE WITNESS: What I was trying</p> <p>24 to say to you, this is in 2002, and</p> <p>25 the Scientific Committee had provided</p>
<p style="text-align: right;">349</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Of course it</p> <p>3 matters.</p> <p>4 MS. LEVINE: You can do whatever</p> <p>5 you want with the deposition after.</p> <p>6 It is rude to interrupt a witness and</p> <p>7 stop him from testifying, and I won't</p> <p>8 allow that. You do that constantly,</p> <p>9 Mr. Olson. Let the witness finish.</p> <p>10 Go ahead, Mr. Gregory.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. The question is if you know</p> <p>13 which -- the names of the members who wanted</p> <p>14 this forward to you?</p> <p>15 MS. LEVINE: I'm instructing you</p> <p>16 not to answer that question until you</p> <p>17 finish mid sentence, and then you can</p> <p>18 answer the second question.</p> <p>19 MR. OLSON: You're instructing</p> <p>20 him not to answer the question that</p> <p>21 was asked?</p> <p>22 MS. LEVINE: Let him finish the</p> <p>23 question, Mr. Olson. How rude can you</p> <p>24 be?</p> <p>25 MR. OLSON: He's not --</p>	<p style="text-align: right;">351</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 recommendations. The Producer</p> <p>3 Committee had to find a way to put</p> <p>4 that into a workable plan. The</p> <p>5 Scientific Committee did not say when</p> <p>6 or how to implement this. And so to</p> <p>7 the Producer Committee, their</p> <p>8 objective all along was to ultimately</p> <p>9 meet these guidelines, but they needed</p> <p>10 to find a way to do this and needed to</p> <p>11 find a way to phase it in. You would</p> <p>12 point -- I would point to you that as</p> <p>13 an example where they're talking about</p> <p>14 ammonia. There was a difference at</p> <p>15 FMI, challenged us with about ammonia</p> <p>16 and we ultimately resolved that with</p> <p>17 FMI. And I believe our guidelines, if</p> <p>18 you were to read them today and has</p> <p>19 been this way for several years, is</p> <p>20 consistent with what the Scientific</p> <p>21 Committee recommended at that time.</p> <p>22 Lighting, I can't refer to that.</p> <p>23 I don't remember what that subject was</p> <p>24 about, but also I would point out to</p> <p>25 you that if the Scientific Advisory</p>

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<p style="text-align: right;">352</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Committee was objecting to this, it</p> <p>3 is -- it's amazing to me, then, that</p> <p>4 they have continued to work with UEP</p> <p>5 all of these years and are still</p> <p>6 engaged today and their names are on</p> <p>7 the UEP certified program. This is a</p> <p>8 point in time when there was an issue</p> <p>9 that happened that I think was an</p> <p>10 embarrassment to them as we were</p> <p>11 trying to develop the program.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Mr. Gregory, do you know the</p> <p>14 identities of the members of the committee</p> <p>15 that asked Mr. Armstrong to forward these</p> <p>16 comments to you? Yes or no?</p> <p>17 A. I think I know who they are.</p> <p>18 Q. And who are they?</p> <p>19 A. I think they were Adele</p> <p>20 Douglass. I think they were Janice</p> <p>21 Armstrong. And I am sorry, I can't remember</p> <p>22 the other name. It could have been Joy</p> <p>23 Mench, but I'm not certain.</p> <p>24 Q. Now, one of the points made to</p> <p>25 you in this memorandum is that to folks not</p>	<p style="text-align: right;">354</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. At this point in time, early</p> <p>3 2002, the Scientific Advisory Committee</p> <p>4 further stated that -- further provided some</p> <p>5 examples of differences including some that</p> <p>6 you touched upon in your last answer about</p> <p>7 ammonia and lighting. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that also included the</p> <p>10 space allowance issue. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the point made by the</p> <p>13 Scientific Advisory Committee --</p> <p>14 A. Let me ask you a question.</p> <p>15 Q. -- is that the scientific</p> <p>16 document made it plain that the lowest limit</p> <p>17 of 67 inches should only apply to small</p> <p>18 Leghorns in shallow cages and that generally</p> <p>19 72 inches per hen should be provided. Right?</p> <p>20 A. The Scientific Committee has</p> <p>21 been engaged with us from that day till this</p> <p>22 day. They have supported and defended the</p> <p>23 document that -- the program that our</p> <p>24 industry was following. If they were so</p> <p>25 upset about it, they would have left us and</p>
<p style="text-align: right;">353</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 familiar with the process, the way the</p> <p>3 documents had been written, those folks might</p> <p>4 assume that the scientific report and the</p> <p>5 producer guidelines are one and the same.</p> <p>6 Right?</p> <p>7 MS. LEVINE: Object to the form</p> <p>8 of the question. Asks for a</p> <p>9 hypothetical.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. That's one of the points made</p> <p>12 to you. Correct?</p> <p>13 A. That's what's stated in this</p> <p>14 e-mail.</p> <p>15 Q. And it's further stated by the</p> <p>16 Scientific Committee but that, in fact, the</p> <p>17 documents are not the same. Right?</p> <p>18 MS. LEVINE: Object to the form</p> <p>19 of the question.</p> <p>20 THE WITNESS: That's what this</p> <p>21 says, but I'm telling you what you're</p> <p>22 doing is looking at a small window of</p> <p>23 time as the program was being</p> <p>24 developed.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">355</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 never been involved with us again. So you</p> <p>3 have to look at the series of time and</p> <p>4 conclude that the Scientific Committee is</p> <p>5 supportive of what wound up eventually in the</p> <p>6 producer program.</p> <p>7 Q. And what the Scientific</p> <p>8 Advisory Committee had found is that</p> <p>9 72 square inches per hen was required for</p> <p>10 hens to perform --</p> <p>11 A. I'm not going to answer. I'm</p> <p>12 telling you what the history is and what</p> <p>13 happened out of that. Quit nitpicking things</p> <p>14 like that at that point in time because it</p> <p>15 didn't have any impact upon what ultimately</p> <p>16 was the program.</p> <p>17 Q. Well, you would agree at this</p> <p>18 point in time that not all the</p> <p>19 recommendations of the Scientific Committee</p> <p>20 had been adopted by the Producer Committee.</p> <p>21 Correct?</p> <p>22 MS. LEVINE: Objection. Asked</p> <p>23 and answered.</p> <p>24 THE WITNESS: Do you understand,</p> <p>25 I'm trying to explain to you that on</p>

<p style="text-align: right;">356</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 day one you could not do all those</p> <p>3 things. You had to find a way to work</p> <p>4 this program, otherwise it would just</p> <p>5 be wasted time. This is --</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Mr. Gregory --</p> <p>8 A. You're nitpicking something and</p> <p>9 I don't have any idea what your point is.</p> <p>10 Q. Mr. Gregory, you would agree</p> <p>11 that at this point in time, early 2002, the</p> <p>12 Producer Committee had not adopted all of the</p> <p>13 recommendations?</p> <p>14 A. I'm tired of that line of</p> <p>15 questioning.</p> <p>16 Q. Are you refusing to answer the</p> <p>17 question?</p> <p>18 A. I'm not refusing to answer the</p> <p>19 question. I'm telling you that this is</p> <p>20 wasting your time and my time by continuing</p> <p>21 this way. Let's talk about what eventually</p> <p>22 happened.</p> <p>23 Q. I would respectfully suggest</p> <p>24 that what's wasting everyone's time today is</p> <p>25 you not answering my questions.</p>	<p style="text-align: right;">358</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Let me hand you what we've</p> <p>5 marked as Gregory-34. This document is Bates</p> <p>6 stamped UE0153426 through 430.</p> <p>7 I'll ask, Mr. Gregory, if you</p> <p>8 can identify this as the minutes of the UEP</p> <p>9 Board of Directors meeting from January 14</p> <p>10 and 15, 2002, as recorded by you?</p> <p>11 A. That's what they state, yes.</p> <p>12 Q. I'd ask you to turn to the</p> <p>13 second page. There is a heading entitled,</p> <p>14 Guideline Overview -- "Guideline Documents."</p> <p>15 Do you see that heading?</p> <p>16 A. Yes.</p> <p>17 Q. The discussion there reports</p> <p>18 that you presented to the Board of Directors</p> <p>19 the reasons for having created the documents</p> <p>20 of the Scientific Committee report, the</p> <p>21 industry guidelines, a retail version of the</p> <p>22 industry guidelines and a consumer version.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then you explained that all</p>
<p style="text-align: right;">357</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Let me try it again.</p> <p>3 Mr. Gregory, would you agree that at this</p> <p>4 point in time, in early 2002, the Producer</p> <p>5 Committee had not adopted all the</p> <p>6 recommendations of the Scientific Committee?</p> <p>7 MS. LEVINE: Objection. Asked</p> <p>8 and answered for about the third time</p> <p>9 now.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. True or false?</p> <p>12 A. True.</p> <p>13 Q. You can put that aside.</p> <p>14 A. What is the point of that?</p> <p>15 Q. Now, was it your</p> <p>16 responsibility, Mr. Gregory, to report to the</p> <p>17 UEP board of directors on the progress of the</p> <p>18 UEP program guidelines?</p> <p>19 A. Yes.</p> <p>20 - - -</p> <p>21 (Exhibit Gregory-34, UEP Board</p> <p>22 of Directors January 14-15, 2002</p> <p>23 Atlanta, Georgia minutes, Bates</p> <p>24 UE0153426 - UE0153430, was marked for</p> <p>25 identification.)</p>	<p style="text-align: right;">359</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of those documents maintained the</p> <p>3 recommendations made by the Scientific</p> <p>4 Committee. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. That's what you told the UEP</p> <p>7 Board of Directors. Right?</p> <p>8 A. Yes.</p> <p>9 Q. Now, what is the retail version</p> <p>10 of the industry guidelines?</p> <p>11 A. I don't recall because it was</p> <p>12 never used. It seems to me like at some</p> <p>13 point in time somebody recommended that our</p> <p>14 guidelines, the program that we were working</p> <p>15 on was too complicated or too detailed or</p> <p>16 something to present to retail, that we</p> <p>17 needed a simpler version or something of it</p> <p>18 as I recall. But it was never -- it never</p> <p>19 became a program.</p> <p>20 Q. And the consumer version, do</p> <p>21 you recall what that was?</p> <p>22 A. I do not. I just -- I think I</p> <p>23 just answered that.</p> <p>24 Q. In your last answer you were</p> <p>25 referring, I believe, to the retail version.</p>

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<p style="text-align: right;">360</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Was that the same as the consumer version or</p> <p>3 was that something different at one time?</p> <p>4 A. I don't recall.</p> <p>5 Q. Was there an aspect of the UEP</p> <p>6 program that was intended for consumers?</p> <p>7 MS. LEVINE: Object to the form</p> <p>8 of the question.</p> <p>9 THE WITNESS: At that time, as I</p> <p>10 recall, we were simply trying to take</p> <p>11 the Scientific Committee</p> <p>12 recommendations and turn them into an</p> <p>13 industry animal husbandry program.</p> <p>14 And it had not been our intention at</p> <p>15 that point in time that this was a --</p> <p>16 this was a consumer -- you know, a</p> <p>17 communication to consumers and this</p> <p>18 had come out of some discussions</p> <p>19 somewhere and I don't recall those.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. So you don't recall what this</p> <p>22 reference to a consumer version was?</p> <p>23 A. I do not.</p> <p>24 Q. If you turn to the next page.</p> <p>25 I'd like you to refer to what's motion number</p>	<p style="text-align: right;">362</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. So is this the facilities in</p> <p>3 the farm that are producing shell eggs?</p> <p>4 A. It could be. Well, all eggs at</p> <p>5 the beginning are in shells. So when a hen</p> <p>6 produces an egg, it is a shell egg.</p> <p>7 Q. Here's my question, and this is</p> <p>8 just my ignorance, but is producer/packer</p> <p>9 facilities being distinguished by some other</p> <p>10 type of facility or are those -- are</p> <p>11 producer/packer facilities all the egg</p> <p>12 facilities a farm would have?</p> <p>13 A. No, it could be -- it could be</p> <p>14 in addition to pack and shell eggs for a</p> <p>15 shell egg customer, it could also be moving</p> <p>16 under the same system into an egg breaking</p> <p>17 facility in -- what we call in-line breaking</p> <p>18 and you could be producing egg products as</p> <p>19 well.</p> <p>20 Q. So both of those come out of a</p> <p>21 producer/packer facility?</p> <p>22 A. Yeah. I think maybe the</p> <p>23 word -- the word doesn't encompass enough,</p> <p>24 but, yes, that's what we're talking about.</p> <p>25 Q. So in other words, this motion</p>
<p style="text-align: right;">361</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 4. Why don't you review that and let me know</p> <p>3 when you're done.</p> <p>4 A. (Reviewing document.)</p> <p>5 Yes, I read it.</p> <p>6 Q. Do you recall that motion being</p> <p>7 presented?</p> <p>8 A. Yes.</p> <p>9 Q. This is a motion by Mr. Looper</p> <p>10 that 100 percent of producer/packer</p> <p>11 facilities would be certified on the program</p> <p>12 and there are some dates and then that issue</p> <p>13 would be revisited. That's generally the</p> <p>14 issue. Right?</p> <p>15 A. Yes.</p> <p>16 Q. What are producer/packer</p> <p>17 facilities?</p> <p>18 A. Well, you have a farm with the</p> <p>19 chickens in the houses, and then those eggs</p> <p>20 leave those chicken houses on egg belts and</p> <p>21 they cross out of the farm through a window</p> <p>22 as such into the place where they're going to</p> <p>23 be graded, washed and sized and put in the</p> <p>24 egg cartons and all that. So the packer part</p> <p>25 of it is an extension of the farm.</p>	<p style="text-align: right;">363</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 put forward here would be -- was that 100</p> <p>3 percent of all the facilities on an egg farm</p> <p>4 must be certified as on the welfare program?</p> <p>5 A. Yes.</p> <p>6 Q. And that issue was going to be</p> <p>7 revisited at a later date?</p> <p>8 A. Yes.</p> <p>9 Q. Why was that issue going to be</p> <p>10 revisited at a later date?</p> <p>11 A. I don't recall. This is the</p> <p>12 beginning of this thing and it needed time</p> <p>13 for the industry to analyze it and, you know,</p> <p>14 vet it out and that kind of thing and come</p> <p>15 back at the October board meeting to find a</p> <p>16 conclusion.</p> <p>17 Q. If you turn the page, there's a</p> <p>18 heading that says, "Industry Economics."</p> <p>19 A. Yes.</p> <p>20 Q. Why don't you review that</p> <p>21 heading, let us know when you're done,</p> <p>22 please.</p> <p>23 A. (Reviewing document.)</p> <p>24 I've read it.</p> <p>25 Q. There's a reference to Dolph</p>

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<p style="text-align: right;">364</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Baker presenting some USDA statistics.</p> <p>3 A. Yes.</p> <p>4 Q. You referenced those statistics</p> <p>5 yesterday. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. Those are the type of</p> <p>8 statistics that UEP would rely on in the</p> <p>9 course of its work. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Mr. Baker concludes by noting</p> <p>12 that we have a crisis. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And that means -- when it says</p> <p>15 "we," that means, I assume, the egg industry?</p> <p>16 A. Yes.</p> <p>17 Q. And the crisis is over supply</p> <p>18 and lower prices. Right?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question.</p> <p>21 THE WITNESS: Would you state</p> <p>22 the question again, then?</p> <p>23 BY MR. OLSON:</p> <p>24 Q. And the crisis is over supply</p> <p>25 and low prices.</p>	<p style="text-align: right;">366</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 for what it is.</p> <p>3 Q. You can put that aside.</p> <p>4 - - -</p> <p>5 (Exhibit Gregory-35, 3/25/02</p> <p>6 United Voices, Bates CM00407889 -</p> <p>7 CM00407892, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Now, would it be fair to say</p> <p>12 that as president of UEP, you asked UEP</p> <p>13 members to make a commitment to the UEP</p> <p>14 Animal Care Program as it was called at the</p> <p>15 time?</p> <p>16 A. Yes.</p> <p>17 Q. And a number of companies did</p> <p>18 make that commitment. Correct?</p> <p>19 A. They did, and to the point</p> <p>20 today that about 85 percent of all eggs in</p> <p>21 the United States are produced following the</p> <p>22 UEP certified guidelines.</p> <p>23 Q. Once a company made that</p> <p>24 commitment, you as first senior vice</p> <p>25 president and then president of UEP expected</p>
<p style="text-align: right;">365</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: That is what I</p> <p>5 believe Mr. Baker is stating.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. He says that a crisis</p> <p>8 management plan had been communicated to</p> <p>9 members. Correct?</p> <p>10 A. That's what he says.</p> <p>11 Q. And those are the types of</p> <p>12 plans that the Marketing Committee would put</p> <p>13 into place from time to time. Correct?</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. And then Mr. Baker reports that</p> <p>19 the current egg prices indicated that the</p> <p>20 plan was working. Correct?</p> <p>21 A. That's what it says.</p> <p>22 Q. Is that consistent with your</p> <p>23 recollection?</p> <p>24 A. I don't recall that, but you're</p> <p>25 trying to refresh my memory, so I accept it</p>	<p style="text-align: right;">367</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 them to abide by that commitment. Correct?</p> <p>3 A. If they wanted to use the UEP</p> <p>4 certified logo or if they wanted to market</p> <p>5 eggs as UEP certified, then we expected them</p> <p>6 to -- we expected them to abide by that</p> <p>7 program.</p> <p>8 Q. And UEP put procedures into</p> <p>9 place to monitor whether companies were</p> <p>10 abiding by the program. Correct?</p> <p>11 A. Yes.</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. And UEP would report to the</p> <p>16 membership the companies that had made the</p> <p>17 commitment to the program from time to time.</p> <p>18 Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Let me hand you what we've</p> <p>21 marked as Gregory-35. This document is Bates</p> <p>22 stamped CM00407889 through 892. And I'll ask</p> <p>23 if you can identify it as a United Voices</p> <p>24 publication from March 25, 2002?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">368</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. That you edited. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And the publication begins by</p> <p>5 noting that "The following egg production</p> <p>6 companies had filed 'An Application For</p> <p>7 Certification' with UEP and have therefore</p> <p>8 committed to implementing Animal Husbandry</p> <p>9 Guidelines." Correct?</p> <p>10 A. Yes.</p> <p>11 Q. That was the situation at the</p> <p>12 time. Right?</p> <p>13 A. Yes.</p> <p>14 Q. And you identified 56</p> <p>15 companies. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And why were you identifying</p> <p>18 these companies in this United Voices</p> <p>19 publication?</p> <p>20 A. The way this was set up is that</p> <p>21 a UEP certified company could buy eggs from</p> <p>22 another UEP certified company to fill their</p> <p>23 markets. The industry needed to know when</p> <p>24 they were buying eggs from another producer</p> <p>25 or going on the egg clearinghouse trading to</p>	<p style="text-align: right;">370</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: We wanted that</p> <p>3 known to not only those, but as I just</p> <p>4 tried to explain to you, those that</p> <p>5 are on the program so that they would</p> <p>6 know who they can do business with if</p> <p>7 they wanted to buy UEP certified eggs.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. You've made that point. I</p> <p>10 just -- and I think you made this point, too,</p> <p>11 but just for the sake of the record, in</p> <p>12 addition you thought it was important that</p> <p>13 the UEP members that had not signed up yet</p> <p>14 know that a number of UEP members had</p> <p>15 committed to the program. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, let's turn to page 2.</p> <p>18 There's a portion headlined, "YOU SHOULD</p> <p>19 IMPLEMENT GUIDELINES, An Editorial by: Gene</p> <p>20 Gregory."</p> <p>21 Do you see that?</p> <p>22 A. Yes. Uh-huh.</p> <p>23 Q. Why don't you go ahead and</p> <p>24 briefly review that and let us know when</p> <p>25 you're done.</p>
<p style="text-align: right;">369</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 buy eggs and they wanted to be able to</p> <p>3 have -- know who were producers of UEP</p> <p>4 certified eggs. So this is a way -- one of</p> <p>5 the reasons as a way for them to know if</p> <p>6 they're doing business with another producer,</p> <p>7 whether that producer was a UEP certified</p> <p>8 company or not.</p> <p>9 Q. And would it be fair to say</p> <p>10 another goal was to show the membership that</p> <p>11 the program was being supported by a number</p> <p>12 of UEP members?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question.</p> <p>15 THE WITNESS: Yes. I think that</p> <p>16 we were proud of the program and we</p> <p>17 wanted to see that -- wanted it be</p> <p>18 known that our egg farmers were</p> <p>19 accepting and implementing this.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. And you wanted that to be known</p> <p>22 to the UEP members that had not yet signed up</p> <p>23 for the program. Right?</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">371</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. (Reviewing document.)</p> <p>3 Okay, I've read it.</p> <p>4 Q. So what are you communicating</p> <p>5 when you write something and say it's an</p> <p>6 editorial and put your name on it versus when</p> <p>7 you write something and don't do that?</p> <p>8 A. I'm expressing an opinion.</p> <p>9 Q. As opposed to relating facts?</p> <p>10 A. Yes.</p> <p>11 Q. So this is your opinion on why</p> <p>12 UEP members should implement the guidelines.</p> <p>13 Right?</p> <p>14 A. Yes.</p> <p>15 Q. And one of the issues you point</p> <p>16 out is that many producers at that time were</p> <p>17 waiting to hear whether their customers</p> <p>18 wanted them to implement the guidelines</p> <p>19 before they committed to doing so. Right?</p> <p>20 A. Yes.</p> <p>21 Q. That was a fair -- fair thing</p> <p>22 for producers to consider. Right?</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question. Calls for a</p> <p>25 hypothetical.</p>

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<p style="text-align: right;">372</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I would assume</p> <p>3 that.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. You say that was a natural</p> <p>6 reaction in this editorial. Right?</p> <p>7 A. Yes.</p> <p>8 Q. What did you mean by that?</p> <p>9 A. Gosh, I don't recall what it</p> <p>10 was.</p> <p>11 Q. You understood why a producer</p> <p>12 might think it would make sense to wait to</p> <p>13 hear whether their customers wanted them to</p> <p>14 implement the guidelines. Right?</p> <p>15 A. Yes.</p> <p>16 Q. And is it fair to say that the</p> <p>17 gist of what you wrote to answer that</p> <p>18 question is, look, the program has a phase-in</p> <p>19 schedule, the first phase-in step will</p> <p>20 provide an economic benefit to the</p> <p>21 marketplace, why doesn't -- you know, I</p> <p>22 recommend that everyone do that, we can see</p> <p>23 how it goes and then decide whether it makes</p> <p>24 sense to make more long-term plans?</p> <p>25 MS. LEVINE: Object to the form</p>	<p style="text-align: right;">374</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 adjustment programs, one of the problems is</p> <p>3 those people who step forward and do it</p> <p>4 suffer some cost. And the benefit that's</p> <p>5 provided everyone receives and that's a</p> <p>6 little bit unfair. Right?</p> <p>7 MS. LEVINE: Object to the form</p> <p>8 of the question. Compound. Calls for</p> <p>9 a hypothetical. The answer, I think,</p> <p>10 mischaracterizes the witness'</p> <p>11 testimony.</p> <p>12 THE WITNESS: That is a fact,</p> <p>13 but let me extend that if you don't</p> <p>14 mind just a little bit. That ever UEP</p> <p>15 marketing committee supply</p> <p>16 recommendation was as such a complete</p> <p>17 failure because it never, ever</p> <p>18 adjusted the flock size to accomplish</p> <p>19 what was the intent. And this here I</p> <p>20 think is the same example. It should</p> <p>21 not be viewed as a supply adjustment</p> <p>22 program.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. You say that that concern</p> <p>25 shouldn't stop people from being committed to</p>
<p style="text-align: right;">373</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of the question. Compound.</p> <p>3 Hypothetical.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Is that a fair summary?</p> <p>6 A. At that point in time obviously</p> <p>7 I'm -- I think this is a good program. And</p> <p>8 I'm encouraging producers to adopt this</p> <p>9 program because I do think it will improve</p> <p>10 animal welfare of egg laying hens. And I</p> <p>11 think we should get started now. We're also</p> <p>12 saying that, you know, this is going to be</p> <p>13 revisited, this 100 percent rule is going to</p> <p>14 be revisited in October after you've had a</p> <p>15 time to, you know, see what your customer's</p> <p>16 thinking is.</p> <p>17 Q. And you make the point that</p> <p>18 some -- you say some may think of this as</p> <p>19 only a supply adjustment program. Right?</p> <p>20 A. Yes.</p> <p>21 Q. That's something that you</p> <p>22 recognized at the time. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And one of the points you make</p> <p>25 in that regard is, like other supply</p>	<p style="text-align: right;">375</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the program because even if -- well, strike</p> <p>3 that. Strike that.</p> <p>4 Then you continue to say, "If</p> <p>5 all the Industry were to follow the</p> <p>6 guidelines through the first step..." and</p> <p>7 when you say "the first step," that means the</p> <p>8 first step of the cage space phase in.</p> <p>9 Right?</p> <p>10 A. Yes, that does, but that -- but</p> <p>11 what is going to happen is that as of June, I</p> <p>12 believe it is, all the other guidelines for</p> <p>13 beak trimming, handling, you know, all the</p> <p>14 other guidelines other than space was going</p> <p>15 to take effect on June 1st. The difficult</p> <p>16 part was how do you do the phase in or the</p> <p>17 increase space because that's going to mean</p> <p>18 that we're going to need to take birds out of</p> <p>19 existing houses and until we can build new</p> <p>20 housing to make up for that, there is going</p> <p>21 to be likely a price increase in eggs because</p> <p>22 of that.</p> <p>23 Q. Right. You expected that once</p> <p>24 the first step of the phase in was completed,</p> <p>25 there would be flock size reduction.</p>

14 (Pages 372 to 375)

<p style="text-align: right;">376</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Correct?</p> <p>3 MS. LEVINE: Object to the form</p> <p>4 of the question. Asked and answered.</p> <p>5 THE WITNESS: Using, you know,</p> <p>6 just USDA statistics and my basic</p> <p>7 knowledge of how things work, yes,</p> <p>8 that would, and the reason being is</p> <p>9 that you wouldn't have had time to</p> <p>10 build new housing to make up for</p> <p>11 those -- that number of birds.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. So you write to UEP members at</p> <p>14 this time that the payback for making the</p> <p>15 first step to a house average of 56 square</p> <p>16 inches would be tremendous. Right?</p> <p>17 MS. LEVINE: Object to the form</p> <p>18 of the question.</p> <p>19 THE WITNESS: First of all, as I</p> <p>20 note there, I am not an economist.</p> <p>21 I'm just simply trying to provide an</p> <p>22 example of what could happen. Each</p> <p>23 individual egg farmer would have to do</p> <p>24 their own independent analysis of what</p> <p>25 this was going to be. I'm just trying</p>	<p style="text-align: right;">378</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 there's the heading that says, "UEA ALLIED TO</p> <p>3 HOLD ANNUAL MEETING."</p> <p>4 A. Yes, sir.</p> <p>5 Q. And it refers to "UEA Allied</p> <p>6 Chairman, Terry Pollard..." Do you know what</p> <p>7 company he's with at that time?</p> <p>8 A. At that time I believe he was</p> <p>9 with -- he's changed two or three times, but</p> <p>10 I believe in those days -- do I have to try</p> <p>11 to remember the series or do I -- is it</p> <p>12 better if I'm on the record saying I don't</p> <p>13 know at that time?</p> <p>14 Q. If you don't know, you don't</p> <p>15 know.</p> <p>16 A. Well, because he changed --</p> <p>17 he's changed work -- during a period of time</p> <p>18 I know him, he's worked for three different</p> <p>19 companies and trying to say in 2002 who he</p> <p>20 worked for at that time, I don't want to be</p> <p>21 incorrect.</p> <p>22 Q. Fair enough. But this reports</p> <p>23 that Mr. Pollard had invited all UEA Allied</p> <p>24 members to participate in UEP's spring</p> <p>25 legislative meeting. Correct?</p>
<p style="text-align: right;">377</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 to give you some basic understanding,</p> <p>3 I think, of what could happen.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. But at the time when you wrote</p> <p>6 to UEP members, you told them your view at</p> <p>7 the time?</p> <p>8 A. Yes.</p> <p>9 Q. Was that the payback for making</p> <p>10 the first step to 56 square inches is</p> <p>11 tremendous. Right?</p> <p>12 MS. LEVINE: Objection.</p> <p>13 THE WITNESS: That's what I</p> <p>14 wrote, yes.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. What does payback mean?</p> <p>17 A. I think that the cost -- what I</p> <p>18 was trying to say is, as I read this, I think</p> <p>19 what I was trying to say is you are going to</p> <p>20 incur a cost to do this, but that this</p> <p>21 reduction of your number of hens would have</p> <p>22 an effect upon price and you will probably</p> <p>23 get a payback from that more than what the</p> <p>24 cost to implement it was.</p> <p>25 Q. Now, if you look at the bottom,</p>	<p style="text-align: right;">379</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And that was something that was</p> <p>4 Mr. Pollard's prerogative to do?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. You can put that aside.</p> <p>7 - - -</p> <p>8 (Exhibit Gregory-36, Producer</p> <p>9 Committee for Animal Welfare March 26,</p> <p>10 2002 Chicago, Illinois Minutes, Bates</p> <p>11 UE0153419 - UE0153422, was marked for</p> <p>12 identification.)</p> <p>13 - - -</p> <p>14 BY MR. OLSON:</p> <p>15 Q. Let me hand you what we've</p> <p>16 marked as Gregory-36. This document is Bates</p> <p>17 stamped UE0153419 through 422.</p> <p>18 I'll ask if you can identify it</p> <p>19 as the minutes of a Producer Committee</p> <p>20 meeting on March 26, 2002, as recorded by</p> <p>21 you?</p> <p>22 A. It's so identified as that.</p> <p>23 Q. Now, from time to time you</p> <p>24 would go to regional meetings of UEP members.</p> <p>25 Correct?</p>

15 (Pages 376 to 379)

<p style="text-align: right;">380</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. By this time, in 1998, there</p> <p>3 were no longer regionals. But we now</p> <p>4 identified this as simply areas. And the way</p> <p>5 our bylaws was set up was that we created</p> <p>6 five areas for the purpose of nominations of</p> <p>7 board members so that we had geographic</p> <p>8 distribution across the country. So, yes, I</p> <p>9 would go to different areas of the country</p> <p>10 and talk to producers.</p> <p>11 Q. Did you do that on an annual</p> <p>12 basis?</p> <p>13 A. No. I don't recall. I don't</p> <p>14 think so, but I don't recall.</p> <p>15 Q. All right. If you could review</p> <p>16 what's under the heading "Certified Company</p> <p>17 Status."</p> <p>18 A. Yes. (Reviewing document.)</p> <p>19 Yes, I read it.</p> <p>20 Q. Now, you report there that the</p> <p>21 number one concern that you had heard from</p> <p>22 the area meetings was why did the certified</p> <p>23 company status only apply to the shell egg</p> <p>24 marketing side of the business. Right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">382</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that so far the certified company status only</p> <p>3 applied to people who were actually packing</p> <p>4 shell eggs?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. Calls for a</p> <p>7 hypothetical.</p> <p>8 THE WITNESS: I think that the</p> <p>9 way the motion was written is that it</p> <p>10 was not what the intention was and so</p> <p>11 it left a misunderstanding, I think.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. And this concern you heard was</p> <p>14 shell egg producers saying it's unfair that</p> <p>15 it would only apply to us?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question. Calls for a</p> <p>18 hypothetical.</p> <p>19 THE WITNESS: That's what the</p> <p>20 minutes here reflect.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. And then the minutes also</p> <p>23 reflect that based upon that concern that had</p> <p>24 been expressed to you, that you recommended</p> <p>25 that the motion from the January board</p>
<p style="text-align: right;">381</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you referred back to the</p> <p>3 motion from the January board meeting that we</p> <p>4 looked at earlier. Right?</p> <p>5 A. Yes.</p> <p>6 Q. Now, are you -- when I asked</p> <p>7 you about that motion earlier, you were</p> <p>8 saying that your interpretation was that it</p> <p>9 didn't just apply to the shell egg market</p> <p>10 side of the business, but does this refresh</p> <p>11 your recollection about that at all?</p> <p>12 A. Yes, I think by the fact that</p> <p>13 that motion in January spoke about</p> <p>14 producer/packer and what I had said to you</p> <p>15 earlier, if we were developing this program</p> <p>16 for all hens, regardless of market, but</p> <p>17 because the motion didn't clearly state that</p> <p>18 there was concern that what we had developed</p> <p>19 was a motion that did not include those</p> <p>20 people that were also breaking those eggs for</p> <p>21 the eggs products market. So there was</p> <p>22 complaints going on amongst the industry that</p> <p>23 there was a segment of the industry that was</p> <p>24 going to be exempt from this program as such.</p> <p>25 Q. So what folks understood is</p>	<p style="text-align: right;">383</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 meeting be changed. Right?</p> <p>3 A. Yes.</p> <p>4 Q. And that that motion be changed</p> <p>5 to require a commitment of meeting the</p> <p>6 guidelines on 100 percent of company</p> <p>7 facilities regardless of where or how the</p> <p>8 eggs were marketed. Right?</p> <p>9 A. Yes.</p> <p>10 Q. And then there was a motion and</p> <p>11 it was voted on. And this says that "The</p> <p>12 100% commitment is intended to be inclusive</p> <p>13 of all company entities, affiliates, etc."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Where did that notion of it</p> <p>17 applying to all company entities including</p> <p>18 all affiliates, who did that arise from, do</p> <p>19 you know?</p> <p>20 A. I don't recall.</p> <p>21 Q. And it says the "Motion carried</p> <p>22 by a vote of 8 yes and 3 no." Right?</p> <p>23 A. Yes.</p> <p>24 Q. Now, this -- these motions were</p> <p>25 conducted with just a simple majority rule.</p>

16 (Pages 380 to 383)

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<p style="text-align: right;">384</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Is that right?</p> <p>3 A. Yes.</p> <p>4 Q. So there are 11 members, if</p> <p>5 it's a six to five vote, the motion carries?</p> <p>6 A. Yes.</p> <p>7 Q. All right. Put that aside.</p> <p>8 - - -</p> <p>9 (Exhibit Gregory-37, UEP Board</p> <p>10 of Directors Conference Call April 3,</p> <p>11 2002 Minutes, Bates UE0210657 &</p> <p>12 UE0210658, was marked for</p> <p>13 identification.)</p> <p>14 - - -</p> <p>15 BY MR. OLSON:</p> <p>16 Q. Let me hand you what's been</p> <p>17 marked as Gregory-37. This document is Bates</p> <p>18 stamped UE0210657 through 58.</p> <p>19 I'll ask if you can identify</p> <p>20 this as the UEP Board of Directors Minutes</p> <p>21 recorded by you April 4, 2002.</p> <p>22 MS. ANDERSON: Could you read</p> <p>23 the Bates number?</p> <p>24 MR. OLSON: UE0210657.</p> <p>25 THE WITNESS: I'm sorry, was</p>	<p style="text-align: right;">386</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I think what I'm saying there,</p> <p>3 that at that October meeting we were to</p> <p>4 determine whether this 100 percent rule is</p> <p>5 going to be inclusive of all the company and</p> <p>6 its affiliates or whether it will be changed</p> <p>7 to just a house or a complex. In other</p> <p>8 words, are we going to be humane to all</p> <p>9 chickens or are we just going to be humane to</p> <p>10 some and not others.</p> <p>11 Q. And motion -- motion number 2</p> <p>12 references the audit system that was being</p> <p>13 put into place and developed at this time.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Were you involved in developing</p> <p>17 the audit guidelines?</p> <p>18 A. What --</p> <p>19 Q. Well, there was an audit</p> <p>20 committee. Correct?</p> <p>21 A. We have an audit subcommittee</p> <p>22 of producers that works with USDA and</p> <p>23 Validus, who are the auditors. What that</p> <p>24 role is, is over the years that this program</p> <p>25 had gone on, if there had been changes in our</p>
<p style="text-align: right;">385</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 there a question?</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Yeah. Can you identify this as</p> <p>5 the minutes?</p> <p>6 A. Yes.</p> <p>7 Q. Motion number 1 reflects the</p> <p>8 motion now to the Board of Directors that we</p> <p>9 just looked at. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. That motion carried with one no</p> <p>12 vote. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who the one no vote</p> <p>15 was?</p> <p>16 A. I do not.</p> <p>17 Q. And then you stated that the</p> <p>18 issue would be reviewed at the UEP's annual</p> <p>19 meeting. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And at that time some</p> <p>22 determination would be made?</p> <p>23 A. Yes.</p> <p>24 Q. Can you explain what that</p> <p>25 determination was?</p>	<p style="text-align: right;">387</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 program as such, the changes that were made</p> <p>3 in the molting programs and other things and</p> <p>4 code, employee code of conduct and all the</p> <p>5 changes that happened thereafter, as changes</p> <p>6 on the basis of a year changed, the</p> <p>7 guidelines changed, then our audit</p> <p>8 subcommittee would want to make sure that</p> <p>9 they -- those things got included in the</p> <p>10 procedures that were ultimately written by</p> <p>11 USDA and Validus.</p> <p>12 Q. But at this point --</p> <p>13 A. But at this point, no. At this</p> <p>14 point in time, what our producers, and I</p> <p>15 don't know where this came from, what our</p> <p>16 producers were trying to decide is, you know,</p> <p>17 what constitutes, you know, how many points,</p> <p>18 how many points do we do this and that, that</p> <p>19 kind of thing. So it's preliminary</p> <p>20 discussions because the first audit</p> <p>21 procedures had not been written yet, the</p> <p>22 first audits had not taken place yet.</p> <p>23 Q. Right. So at this point,</p> <p>24 April 2002, around this time it's still the</p> <p>25 UEP producers who are determining how many</p>

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<p style="text-align: right;">388</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 points there will be, what's pass and what is</p> <p>3 fail and how the points are added up. Right?</p> <p>4 A. At that point in time, yes.</p> <p>5 Q. And were you the UEP staff</p> <p>6 member responsible for working with that</p> <p>7 subcommittee?</p> <p>8 A. Yes.</p> <p>9 Q. And did you provide input into</p> <p>10 the audit guidelines?</p> <p>11 A. I don't recall.</p> <p>12 Q. Motion 2 indicates that the</p> <p>13 audit system that was approved was going to</p> <p>14 have a 200 point scoring system. Right?</p> <p>15 A. Yes.</p> <p>16 Q. And for chicks hatched after</p> <p>17 April 1, 2002, producer can pass with</p> <p>18 140 points. Right?</p> <p>19 A. Yes.</p> <p>20 Q. So they could fail a number of</p> <p>21 items and still pass. Right?</p> <p>22 A. At that point in time, yes.</p> <p>23 Q. And then after October 1, 2003,</p> <p>24 they had to get at least 170 points to pass.</p> <p>25 Right?</p>	<p style="text-align: right;">390</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 with the UEA divisions to discuss the</p> <p>3 program?</p> <p>4 A. I don't recall that.</p> <p>5 - - -</p> <p>6 (Exhibit Gregory-38, UEA Further</p> <p>7 Processors Animal Welfare Briefing</p> <p>8 Breakfast Caesars Palace -- Las Vegas,</p> <p>9 Nevada April 22, 2002 Minutes, Bates</p> <p>10 MPS-00122892 & MPS-00122893, was</p> <p>11 marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Let me hand you what's been</p> <p>15 marked as Gregory-38, which is Bates stamped</p> <p>16 MPS-00122892 through 893.</p> <p>17 I'll ask if you can identify</p> <p>18 this as the minutes of a UEP further</p> <p>19 processor briefing breakfast on April 22,</p> <p>20 2002, as reported by you?</p> <p>21 A. That's what it so states, so</p> <p>22 yeah.</p> <p>23 Q. And do you recall this briefing</p> <p>24 breakfast?</p> <p>25 A. I do not.</p>
<p style="text-align: right;">389</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. So they could still lose</p> <p>4 30 points but pass. Right?</p> <p>5 A. Yes.</p> <p>6 Q. And then motion 2 also provides</p> <p>7 that failure to meet the cage space allowance</p> <p>8 would be an automatic failure. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Were there any other automatic</p> <p>11 failures at that time?</p> <p>12 A. At that time, no.</p> <p>13 Q. You can put that aside.</p> <p>14 Now, as in your role at UEP,</p> <p>15 did you make an effort to communicate with</p> <p>16 UEA members about the development of the</p> <p>17 guidelines and what was occurring with regard</p> <p>18 to the program?</p> <p>19 A. Yes.</p> <p>20 Q. And what did you do to make</p> <p>21 that effort?</p> <p>22 A. Well, first of all, they are</p> <p>23 receiving our United Voices newsletter.</p> <p>24 Beyond that, I don't recall.</p> <p>25 Q. Do you recall hosting meetings</p>	<p style="text-align: right;">391</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall the purpose of</p> <p>3 the breakfast?</p> <p>4 A. Well, this, again, is held</p> <p>5 at -- in Las Vegas at the Urner Barry</p> <p>6 conference that they hold annually, and it</p> <p>7 has been kind of, maybe not always, but had</p> <p>8 been kind of consistent that the UEA Further</p> <p>9 Processor Group would have a meeting during</p> <p>10 that correspondence.</p> <p>11 Q. Do you know it's in conjunction</p> <p>12 with Urner Barry because of where it was held</p> <p>13 and the time of year?</p> <p>14 A. Yes, it was held that way</p> <p>15 because it was expected that a lot of these</p> <p>16 people would be attending the Urner Barry</p> <p>17 conference and so it was a way to coordinate</p> <p>18 two things at one time.</p> <p>19 Q. And did UEP also hold meetings</p> <p>20 in conjunction with the Urner Barry</p> <p>21 conference?</p> <p>22 A. You know what, I don't think we</p> <p>23 ever did, but I don't want to be caught</p> <p>24 because my memory may not be good enough, but</p> <p>25 I don't think we ever did.</p>

18 (Pages 388 to 391)

<p style="text-align: right;">392</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. It's titled an "Annual Welfare</p> <p>3 Briefing Breakfast." What does that refer</p> <p>4 to?</p> <p>5 A. My quick scan of this is that</p> <p>6 we are, again, at a point in time when there</p> <p>7 is some confusion about who will the UEP</p> <p>8 certified program apply to. There has been</p> <p>9 some objection, as I would suspect, from some</p> <p>10 of the people, some of our members that are</p> <p>11 in the egg breaking business, and this is</p> <p>12 providing them with an update on what's going</p> <p>13 on and to have a dialogue about this.</p> <p>14 Q. You made a presentation at this</p> <p>15 meeting about certain aspects of the program.</p> <p>16 Correct?</p> <p>17 A. It says that I did a review of</p> <p>18 the space allowance requirements.</p> <p>19 Q. And some other aspects?</p> <p>20 A. And some other aspects.</p> <p>21 Q. And President Al Pope made some</p> <p>22 comments as well. Correct?</p> <p>23 A. Yes, he did.</p> <p>24 Q. And Chad Gregory says conducted</p> <p>25 an open discussion of ideas or questions from</p>	<p style="text-align: right;">394</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 know. And that was seconded by --</p> <p>3 A. Cutler Egg Products I think is</p> <p>4 what it is. I think that's what it is.</p> <p>5 Q. And it was seconded by a Blair</p> <p>6 Van Zetten. Do you know what company he was</p> <p>7 with?</p> <p>8 A. Blair Van Zetten is a UEA</p> <p>9 further processor member, in Oskaloosa, Iowa.</p> <p>10 The name of the company is Oskaloosa Food</p> <p>11 Products. I may be -- I think that's right.</p> <p>12 But it's Oskaloosa something.</p> <p>13 Q. And there was a motion that</p> <p>14 they made to form a UEA committee to develop</p> <p>15 discussion points and coordination of Animal</p> <p>16 Husbandry Guidelines with the UEP. And it</p> <p>17 says that motion carried. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know what occurred next</p> <p>20 with regard to that motion?</p> <p>21 A. I do not.</p> <p>22 Q. Put that aside.</p> <p>23 - - -</p> <p>24 (Exhibit Gregory-39, Animal</p> <p>25 Welfare Committee Meeting January 21,</p>
<p style="text-align: right;">393</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the floor. Correct?</p> <p>3 A. Yes.</p> <p>4 MS. LEVINE: Objection to the</p> <p>5 form of the question. He's answering</p> <p>6 as to what the document says.</p> <p>7 THE WITNESS: That's what the</p> <p>8 document states.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. And then it refers to some</p> <p>11 motions that were made. Correct?</p> <p>12 A. I haven't read them yet, but I</p> <p>13 will.</p> <p>14 Q. I'm just going to ask you about</p> <p>15 one, the first one.</p> <p>16 A. Okay. Yes.</p> <p>17 Q. So it refers to a motion by a</p> <p>18 Harold Cutler. Do you know who that is?</p> <p>19 A. Cutler.</p> <p>20 Q. Is it Cutler?</p> <p>21 A. Yeah. He is a -- he is a UEA</p> <p>22 further processor member of the egg breaking</p> <p>23 business, and I'm trying to remember the name</p> <p>24 of his company. It was in Alabama.</p> <p>25 Q. If it comes to you, let us</p>	<p style="text-align: right;">395</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 2003 Atlanta, Georgia Minutes, Bates</p> <p>3 UE0153366 - UE0153368, was marked for</p> <p>4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Let me hand you what we've</p> <p>8 marked as Gregory-39. This is a document</p> <p>9 that's Bates stamped UE0153366 through 68.</p> <p>10 I'll ask if you can identify it</p> <p>11 as the minutes of an Animal Welfare Committee</p> <p>12 meeting dated January 21, 2003 as reported by</p> <p>13 you?</p> <p>14 A. Yes. It is the minutes, yes.</p> <p>15 I have that.</p> <p>16 Q. If you'll just look at the very</p> <p>17 end of the minutes, there's a heading that</p> <p>18 says, "Backfill of Layer Houses."</p> <p>19 A. Yes.</p> <p>20 Q. Let me know when you've</p> <p>21 reviewed that.</p> <p>22 A. Yes.</p> <p>23 Q. Basically what this says, that</p> <p>24 some producers had come to you and asked</p> <p>25 about the status of being allowed to backfill</p>

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<p style="text-align: right;">396</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 houses. Right?</p> <p>3 A. Yes.</p> <p>4 Q. And you reported that</p> <p>5 backfilling was allowed so long as it didn't</p> <p>6 result in there being more layers in the</p> <p>7 house than were allowed under the space</p> <p>8 allowance. Right?</p> <p>9 A. Yes.</p> <p>10 Q. And you asked if anyone wanted</p> <p>11 to speak to changing the policy. Right?</p> <p>12 A. Yes.</p> <p>13 Q. And as you record, there are --</p> <p>14 there were the committee members and then a</p> <p>15 number of staffing guests at the -- at this</p> <p>16 meeting. Right?</p> <p>17 A. Yes.</p> <p>18 Q. And the minutes recorded that</p> <p>19 no one recommended a change. Correct?</p> <p>20 A. There would be changes made</p> <p>21 later on to that issue, but at that time this</p> <p>22 was something it was completely unexpected.</p> <p>23 We didn't anticipate this and it was</p> <p>24 addressed at a later time.</p> <p>25 Q. But at this --</p>	<p style="text-align: right;">398</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 know.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. This document is Bates stamped</p> <p>5 MPS-00123260 through 261, and I'll ask if you</p> <p>6 can identify it as a memorandum you sent to</p> <p>7 animal care certified companies on</p> <p>8 February 3, 2003.</p> <p>9 A. Yes.</p> <p>10 Q. And you -- let me just ask you</p> <p>11 this: Sometimes I see a reference to animal</p> <p>12 care, and I know that was the name of the</p> <p>13 program at this time and then sometimes the</p> <p>14 committee is referred to as the Animal</p> <p>15 Welfare Committee. Do those terms mean the</p> <p>16 same thing to you?</p> <p>17 A. They do. We called the program</p> <p>18 at that time Animal Care Certified. We --</p> <p>19 but the committee was -- should have been and</p> <p>20 always should have been Animal Welfare</p> <p>21 Committee.</p> <p>22 Q. Who came up with the name</p> <p>23 Animal Care Certified?</p> <p>24 A. It all began with us asking</p> <p>25 American Egg Board to do a -- conduct a</p>
<p style="text-align: right;">397</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. -- meeting no one spoke up and</p> <p>4 recommended a change. Correct?</p> <p>5 A. Right. Because no one expected</p> <p>6 this to happen.</p> <p>7 Q. No one expected what to happen?</p> <p>8 A. This backfilling of houses.</p> <p>9 Q. But you had -- you had been</p> <p>10 told -- you had been contacted by people</p> <p>11 presumably indicating their intent to do it.</p> <p>12 Right?</p> <p>13 A. Yes.</p> <p>14 Q. You can put that aside.</p> <p>15 - - -</p> <p>16 (Exhibit Gregory-40, 2/3/03</p> <p>17 Letter, Bates MPS-00123260 &</p> <p>18 MPS-00123261, was marked for</p> <p>19 identification.)</p> <p>20 - - -</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Let me hand you what has been</p> <p>23 marked as Gregory-40.</p> <p>24 MS. LEVINE: Mr. Gregory,</p> <p>25 whenever you need a break, just let us</p>	<p style="text-align: right;">399</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 survey, and they were provided with several</p> <p>3 different names as to what would be the</p> <p>4 most -- through this consumer survey, what</p> <p>5 would be the most -- the one gaining the most</p> <p>6 preference. And the results of that AEB</p> <p>7 survey and who they had to do the survey, I</p> <p>8 don't know that, but asked AEB to fund that</p> <p>9 survey. Anyway, the results of that survey</p> <p>10 is that, as I recall, it strongly came back</p> <p>11 in favor of the name Animal Care Certified.</p> <p>12 Q. So yesterday we saw a reference</p> <p>13 to AEB providing some financial funding for</p> <p>14 the program. Is that what you're referring</p> <p>15 to?</p> <p>16 A. That was one, there may have</p> <p>17 been others, yes.</p> <p>18 Q. So as a survey of consumers to</p> <p>19 help determine what to name the program?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And do you know what the -- how</p> <p>22 the survey was conducted?</p> <p>23 A. I do not.</p> <p>24 Q. Who at UEP would know most</p> <p>25 about how that survey was conducted?</p>

20 (Pages 396 to 399)

<p style="text-align: right;">400</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I would if --</p> <p>3 Q. You. Okay. Do you know where</p> <p>4 we would find any records about that survey?</p> <p>5 For example, the survey itself?</p> <p>6 A. Gosh. My gosh. That's been</p> <p>7 too many years ago for me, so I don't know.</p> <p>8 Q. And why did AEB survey</p> <p>9 consumers?</p> <p>10 A. There's a difference between</p> <p>11 UEP and AEB. UEP is dealing on the</p> <p>12 production side of the business and the</p> <p>13 problems with the production side of the</p> <p>14 business. AEB is in the business of</p> <p>15 promoting and research of the egg itself. So</p> <p>16 they are the ones that deals with consumers,</p> <p>17 have all these years and we've tried to</p> <p>18 respect that division. So they're the ones</p> <p>19 dealing with the consumers and they have PR</p> <p>20 and advertising agencies that work for AEB.</p> <p>21 So I suspect one of them did this, but I --</p> <p>22 see, I don't know.</p> <p>23 Q. So AEB conducted this survey</p> <p>24 and reported back to you that consumers like</p> <p>25 the term animal care best?</p>	<p style="text-align: right;">402</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the Better Business Bureau over that name --</p> <p>3 Q. Let's hold off on that for a</p> <p>4 moment. I mean when you called it animal</p> <p>5 care and you stamped that on the logo and you</p> <p>6 wrote about it in United Voices and called it</p> <p>7 animal care, what did you mean to communicate</p> <p>8 by those words, animal care? What did UEP</p> <p>9 mean to communicate by that?</p> <p>10 A. That this was eggs being</p> <p>11 produced by an egg farmer following the</p> <p>12 science-based guidelines and the program that</p> <p>13 UEP developed.</p> <p>14 Q. And that's it?</p> <p>15 A. That's all I can think of now.</p> <p>16 Q. All right. So --</p> <p>17 A. Thanks for giving me the chance</p> <p>18 to talk, though. But I can't fill it this</p> <p>19 time.</p> <p>20 Q. So let's look at Exhibit 40</p> <p>21 which you're reporting to the certified</p> <p>22 companies.</p> <p>23 A. Exhibit you say 4?</p> <p>24 Q. Exhibit 40, the one in front of</p> <p>25 you.</p>
<p style="text-align: right;">401</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And that's why the term was</p> <p>4 adopted for the program?</p> <p>5 A. Yes. And then from that, we --</p> <p>6 when we created the logo with the Animal Care</p> <p>7 Certified on it, all the -- all labeling of</p> <p>8 and logos of the egg industry has to -- is</p> <p>9 approved by USDA and FDA, and they gave</p> <p>10 approval for the use of this logo.</p> <p>11 Q. When you used the logo and when</p> <p>12 you called the program an Animal Care</p> <p>13 Program, what were you meaning to communicate</p> <p>14 by using that terminology?</p> <p>15 A. Well, you know, honestly when</p> <p>16 we first got this thing started, we didn't</p> <p>17 view this -- our customer, the egg farmer's</p> <p>18 customer is the retailer or the ingredient</p> <p>19 user. All we're trying to do is to</p> <p>20 communicate to our customer that you made an</p> <p>21 order to purchase Animal Care Certified eggs</p> <p>22 this period of time, it was a way to verify</p> <p>23 that what you had ordered is what you</p> <p>24 actually received. And if you want me to go</p> <p>25 on, then after having a complaint filed with</p>	<p style="text-align: right;">403</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes, okay.</p> <p>3 Q. And have you reviewed this?</p> <p>4 A. No, I have not yet.</p> <p>5 Q. Please just briefly review it.</p> <p>6 A. (Reviewing document.)</p> <p>7 Okay. I read it.</p> <p>8 Q. I'd like to look at point 5.</p> <p>9 You reference that you had heard that some</p> <p>10 customers were unwilling to pay increased</p> <p>11 cost for eggs that met the guidelines.</p> <p>12 Right?</p> <p>13 A. Yes.</p> <p>14 Q. You say, "We still recommend</p> <p>15 that you only put the Animal Care Certified</p> <p>16 logo on the cartons of companies willing to</p> <p>17 pay the costs."</p> <p>18 Do you see that?</p> <p>19 A. I see that.</p> <p>20 Q. What was the reason for that</p> <p>21 recommendation?</p> <p>22 A. Of course all that changed</p> <p>23 later on, but at that time this is -- we're</p> <p>24 early in the program again, and it's --</p> <p>25 retail market is always wanting you to do</p>

21 (Pages 400 to 403)

<p style="text-align: right;">404</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 things and not pass on costs. They want you</p> <p>3 to implement the SQF food. They want you to</p> <p>4 implement the USDA program. They want you to</p> <p>5 implement the animal welfare. They want you</p> <p>6 to do all these things, but I'm not going to</p> <p>7 pay for it. So this is, I think, what is</p> <p>8 going on at that time and so what I'm saying</p> <p>9 at that time, you know, this is not a full</p> <p>10 blown program that we're really into yet at</p> <p>11 this point in time. So what I'm writing</p> <p>12 about at that time, okay, if your customer</p> <p>13 doesn't want you to pay for UEP certified</p> <p>14 eggs, then don't put that logo on that</p> <p>15 carton. Even though the eggs you're</p> <p>16 producing is doing so, don't give them the</p> <p>17 opportunity to have that logo.</p> <p>18 Q. Don't give them the benefit of</p> <p>19 having the logo on their eggs. Right?</p> <p>20 A. Right.</p> <p>21 Q. Because consumers will see that</p> <p>22 logo and might think that it meant the eggs</p> <p>23 had some benefit?</p> <p>24 A. Right. Yes. Possibly.</p> <p>25 Q. And you conclude by saying,</p>	<p style="text-align: right;">406</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What you write here to the</p> <p>3 members is "...egg prices have and will</p> <p>4 continue to reflect the impact of these</p> <p>5 welfare guidelines." That's what you wrote.</p> <p>6 Right?</p> <p>7 MS. LEVINE: Objection. Asked</p> <p>8 and answered.</p> <p>9 THE WITNESS: I wrote that, but</p> <p>10 there's lots of factors that impact</p> <p>11 the egg price. And there was -- that</p> <p>12 would be not the only thing, there</p> <p>13 would be other things that would have</p> <p>14 it, but it's a possibility that this</p> <p>15 welfare program could have a part of</p> <p>16 that.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. And when you say they have --</p> <p>19 the egg prices have and will continue to</p> <p>20 reflect the impact of these welfare</p> <p>21 guidelines, you mean -- you meant at this</p> <p>22 time --</p> <p>23 A. Yes.</p> <p>24 Q. -- that egg prices would</p> <p>25 reflect that in the form of going up. Right?</p>
<p style="text-align: right;">405</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 "You should not get discouraged." And you</p> <p>3 say, "...the flock reduction that has begun</p> <p>4 to take effect..." you're referring to the</p> <p>5 flock reduction resulting from the hens being</p> <p>6 committed to the program. Right?</p> <p>7 MS. LEVINE: Objection to the</p> <p>8 form of the question.</p> <p>9 THE WITNESS: It was -- yeah, it</p> <p>10 was anticipated that we're going to go</p> <p>11 through periods of time as this thing</p> <p>12 goes on, that there will be periods of</p> <p>13 time that we cannot build enough new</p> <p>14 housing to make up for that loss and</p> <p>15 these individual houses. So there</p> <p>16 will be cycles as we go through this</p> <p>17 thing, but the ultimate goal, and it</p> <p>18 actually happened, is that by the time</p> <p>19 we complete this program, that there</p> <p>20 will not have been any market</p> <p>21 disruption or any unnecessary price</p> <p>22 increase because -- and that we will</p> <p>23 eventually wind up with the same</p> <p>24 number or more hens than we started.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">407</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Objection. Asked</p> <p>3 and answered several times now.</p> <p>4 THE WITNESS: Please understand</p> <p>5 at that time we're trying to be as</p> <p>6 positive as we can about the program.</p> <p>7 We're trying to promote the program.</p> <p>8 We're trying to tell people that --</p> <p>9 you know, I'm trying to use reasons to</p> <p>10 say that it's worthwhile. Now, I'm</p> <p>11 not an economist. So whether that</p> <p>12 legitimately happened or not, I don't</p> <p>13 know. What I'm trying to be is a</p> <p>14 salesman at that point in time.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. My question is maybe even more</p> <p>17 basic. It's when you say egg prices will</p> <p>18 reflect the impact of the guidelines, you</p> <p>19 mean the prices will reflect that by going</p> <p>20 up --</p> <p>21 MS. LEVINE: Objection to the</p> <p>22 form --</p> <p>23 BY MR. OLSON:</p> <p>24 Q. -- as opposed to down?</p> <p>25 MS. LEVINE: Objection to the</p>

22 (Pages 404 to 407)

<p style="text-align: right;">408</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 form of the question. Asked and</p> <p>3 answered several times now.</p> <p>4 THE WITNESS: So that would be</p> <p>5 my anticipation, yes.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-41, 6/4/03</p> <p>8 United Voices, Bates UE0136174 -</p> <p>9 UE0136177, was marked for</p> <p>10 identification.)</p> <p>11 - - -</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Let me hand you what's been</p> <p>14 marked as Gregory-41. This is a document</p> <p>15 Bates stamped UE0136174 through 177.</p> <p>16 Now, do you recall what was</p> <p>17 happening with egg prices in the spring of</p> <p>18 2003?</p> <p>19 A. No, unless I go back and look</p> <p>20 at a graph or a chart or something, I don't</p> <p>21 have a recall for particular dates.</p> <p>22 Q. First of all, can you identify</p> <p>23 this as a United Voices publication you</p> <p>24 edited from June 4, 2003?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">410</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. But that was your hope and</p> <p>3 expectation at this time. Correct?</p> <p>4 MS. LEVINE: Objection to the</p> <p>5 form of the question. Asked and</p> <p>6 answered just now.</p> <p>7 THE WITNESS: I think I</p> <p>8 anticipated that there was going to be</p> <p>9 problems, but at this point in time,</p> <p>10 I'm not trying to discourage people</p> <p>11 from joining the program. Again, I'm</p> <p>12 trying to be a salesman.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. On page 2, there's a reference</p> <p>15 to producers who lead the animal welfare</p> <p>16 movement.</p> <p>17 A. Yes.</p> <p>18 Q. And in the second paragraph you</p> <p>19 reference Barrie Wilcox. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. You say "...was the first</p> <p>22 Committee Chairman..." Right?</p> <p>23 A. Yes. Yes.</p> <p>24 Q. "...and was very involved with</p> <p>25 the Scientific Advisory Committee..."</p>
<p style="text-align: right;">409</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. On the first page at the second</p> <p>3 half it says, "Layer Inventory Shows</p> <p>4 Promising Sign."</p> <p>5 A. Yes.</p> <p>6 Q. And it was promising because</p> <p>7 layer inventory was lower. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. At the bottom, you wrote "The</p> <p>10 hatch reduction, to meet the space allowance</p> <p>11 guidelines of the Animal Care Certified</p> <p>12 Program are beginning to show egg market</p> <p>13 value improvements." Right?</p> <p>14 A. Yes.</p> <p>15 Q. "This trend should continue."</p> <p>16 Correct?</p> <p>17 A. Yes.</p> <p>18 Q. That was your view at the time.</p> <p>19 Right?</p> <p>20 A. That was my hope. It didn't</p> <p>21 turn out to be that way, but that was my hope</p> <p>22 at the time. The industry nearly went</p> <p>23 bankrupt in 2005 and 2006 because we built</p> <p>24 housing too quickly and we flooded the market</p> <p>25 with eggs.</p>	<p style="text-align: right;">411</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. True statement?</p> <p>4 A. Yes.</p> <p>5 Q. Now let's look at page 4. In</p> <p>6 the middle of page 4 it references "May's</p> <p>7 Prices Best in Many Years." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Does that refresh your</p> <p>10 recollection about what egg prices were doing</p> <p>11 at this time?</p> <p>12 A. I would have to read it to --</p> <p>13 Q. Please do.</p> <p>14 A. At this point not having --</p> <p>15 (reviewing document.)</p> <p>16 I've read it.</p> <p>17 Q. Does that refresh your</p> <p>18 recollection about what prices were doing at</p> <p>19 this time?</p> <p>20 A. I will have to accept this for</p> <p>21 what it says.</p> <p>22 Q. What this indicates is that egg</p> <p>23 prices were some of the best they had been in</p> <p>24 many years. Correct?</p> <p>25 A. It does.</p>

23 (Pages 408 to 411)

<p style="text-align: right;">412</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you attribute that to</p> <p>3 "Reduced pullet hatch finally making an</p> <p>4 impact upon supplies." Correct?</p> <p>5 A. Yes.</p> <p>6 Q. "USEM exports reducing supplies</p> <p>7 at critical times." Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And the "Animal Care Certified</p> <p>10 program beginning to work like many had</p> <p>11 projected." Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know who you were</p> <p>14 referring to when you referred to many</p> <p>15 projecting that?</p> <p>16 A. Ask the question again.</p> <p>17 Q. When you say "many had</p> <p>18 projected," do you know who you're referring</p> <p>19 to?</p> <p>20 A. No, I do not. Understand, I</p> <p>21 think that we would have to look at this as</p> <p>22 we have -- we are -- we are coming -- we're</p> <p>23 trying to come out of a very disastrous</p> <p>24 period of time of when the industry was</p> <p>25 losing lots of money.</p>	<p style="text-align: right;">414</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 conference. Right?</p> <p>3 A. Yes.</p> <p>4 Q. They're invited to attend?</p> <p>5 A. Yes.</p> <p>6 Q. And there's a reference there</p> <p>7 to "...enjoyable social events." What type</p> <p>8 of social events would occur in conjunction</p> <p>9 with these meetings?</p> <p>10 A. Normally at this annual meeting</p> <p>11 we had a golf tournament, just banquets and</p> <p>12 those kind of things. I think that's the</p> <p>13 extent of it.</p> <p>14 Q. At UEP meetings, were there</p> <p>15 warnings provided by lawyers about the types</p> <p>16 of communications that could occur as a rule?</p> <p>17 MS. LEVINE: Mr. Gregory, do not</p> <p>18 reveal any communications with your</p> <p>19 counsel requesting advice or giving</p> <p>20 advice. If there are public</p> <p>21 announcements by lawyers, that is the</p> <p>22 question.</p> <p>23 THE WITNESS: Again, this is</p> <p>24 July 2003. That's nearly ten years</p> <p>25 ago. I don't recall any of that</p>
<p style="text-align: right;">413</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. You can put that aside.</p> <p>3 - - -</p> <p>4 (Exhibit Gregory-42, 7/17/03</p> <p>5 United Voices, Bates UE0071388 -</p> <p>6 UE0071391, was marked for identification.</p> <p>7 - - -</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Let me hand you what's been</p> <p>10 marked Gregory-42. This is Bates stamped</p> <p>11 UE0071388 through 71391.</p> <p>12 A. Yes.</p> <p>13 Q. I'll ask -- I'll ask if you can</p> <p>14 identify it as the United Voices you edited</p> <p>15 from July 17, 2003?</p> <p>16 A. Yes.</p> <p>17 Q. The first sentence indicates</p> <p>18 that "The first announcement of UEP's Annual</p> <p>19 Meeting & Executive Conference is now being</p> <p>20 mailed to all UEP/UEA members and friends."</p> <p>21 Right?</p> <p>22 A. Yes.</p> <p>23 Q. So UEA members and all the</p> <p>24 divisions of UEA were informed when UEP would</p> <p>25 hold its annual meeting & executive</p>	<p style="text-align: right;">415</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 happening.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Was there a time more recently</p> <p>5 when UEP put into place a practice of having</p> <p>6 a lawyer at the meeting publicly giving some</p> <p>7 advice or warnings about the types of</p> <p>8 communications that could occur?</p> <p>9 MS. LEVINE: Mr. Gregory, you</p> <p>10 may answer that question if that is so</p> <p>11 and any of such communications happen</p> <p>12 in a public meeting that is beyond the</p> <p>13 members of UEP.</p> <p>14 THE WITNESS: For the past few</p> <p>15 years we have had a statement in the</p> <p>16 meeting folders and communicated</p> <p>17 verbally about what the subjects</p> <p>18 will -- this meeting will not contain</p> <p>19 certain subjects and who may and who</p> <p>20 may not attend certain meetings and</p> <p>21 those kind of things.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. When was that put into place?</p> <p>24 A. It was put in place probably --</p> <p>25 sometime after this lawsuit was filed. And I</p>

24 (Pages 412 to 415)

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416	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 don't know whether it was put in place in</p> <p>3 October -- I don't know if it was put in</p> <p>4 place at our annual meeting in October or</p> <p>5 whether it was at our January meeting, I</p> <p>6 don't recall.</p> <p>7 MS. LEVINE: What year,</p> <p>8 Mr. Gregory?</p> <p>9 THE WITNESS: I'm sorry. 2008</p> <p>10 or 2009.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. And who is the person, just the</p> <p>13 name of the person who or persons who</p> <p>14 communicates that verbally?</p> <p>15 A. Am I allowed to say the name?</p> <p>16 MS. LEVINE: The name of the</p> <p>17 lawyer that stands up at any point in</p> <p>18 time in a public meeting, you may</p> <p>19 state.</p> <p>20 THE WITNESS: Initially when we</p> <p>21 put this in place, the name of the</p> <p>22 lawyer was Nowell Berreth. And not</p> <p>23 long after that we changed to Randon</p> <p>24 Wilson.</p> <p>25 BY MR. OLSON:</p>	418	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And those are your words.</p> <p>3 Correct?</p> <p>4 A. It is my words, and I'd like to</p> <p>5 explain.</p> <p>6 Q. Let me ask you a question about</p> <p>7 the first page of the document. Back to the</p> <p>8 first page. There's a heading that says,</p> <p>9 "Wegmans' Animal Care Certified Program."</p> <p>10 A. Yes.</p> <p>11 Q. Who is Wegmans?</p> <p>12 A. Wegmans is a grocery chain</p> <p>13 that's headquartered in -- I can't remember</p> <p>14 the city in New York.</p> <p>15 Q. Wolcott?</p> <p>16 A. No. They're -- they owned an</p> <p>17 egg farm I think with about 600,000 laying</p> <p>18 hens that was located at Wolcott, New York,</p> <p>19 but I can't recall the headquarters city of</p> <p>20 Wegmans is what I'm saying.</p> <p>21 Q. Was Wegmans a UEP member?</p> <p>22 A. No, they were a UEA</p> <p>23 producer/packer member, as I recall.</p> <p>24 Q. To your knowledge, do you know</p> <p>25 why Wegmans was a UEA member as opposed to a</p>
417	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is Mr. Berreth with the Brann &</p> <p>3 Isaacson firm?</p> <p>4 A. No, he's with -- in Atlanta.</p> <p>5 Oh, God, isn't that terrible. I paid him so</p> <p>6 much money, I can't remember -- should be</p> <p>7 able to remember the name. Help me here.</p> <p>8 Q. That's okay. We'll find it out</p> <p>9 later. That's fine.</p> <p>10 Mr. Wilson, do you recall what</p> <p>11 firm he's with?</p> <p>12 A. Its name, Jones Waldo. It's</p> <p>13 out of Salt Lake City, Utah.</p> <p>14 Q. Why did you make the change?</p> <p>15 MS. LEVINE: Objection to the</p> <p>16 form of the question. I believe that</p> <p>17 question calls for legal advice.</p> <p>18 MR. OLSON: Fine. We'll</p> <p>19 consider that.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. So this -- let's look at the</p> <p>22 United Voices July 17, 2003. You -- if you</p> <p>23 turn to the last page, there's a heading</p> <p>24 titled, "Word of Caution."</p> <p>25 A. Yes.</p>	419	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 UEP member?</p> <p>3 A. I don't recall the reason. I</p> <p>4 think -- but I believe it was at their</p> <p>5 request.</p> <p>6 Q. And who is Jason Wadsworth?</p> <p>7 A. He was -- he was -- his -- he</p> <p>8 and his father Andy Wadsworth were the</p> <p>9 managers or such of the egg farm, and Jason</p> <p>10 was the one particularly heading up the</p> <p>11 Animal -- their Animal Welfare Program.</p> <p>12 Q. Did Mr. Wadsworth play any role</p> <p>13 on any committees at UEP or UEA, to your</p> <p>14 knowledge?</p> <p>15 A. I don't recall.</p> <p>16 Q. Okay. You can put that aside.</p> <p>17 Now, you -- do you recall the</p> <p>18 time, you referenced it, I believe, when the</p> <p>19 National Advertising Division of the Council</p> <p>20 for Better Business Bureau considered a</p> <p>21 petition with regard to the Animal Care</p> <p>22 Program?</p> <p>23 A. Yes.</p> <p>24 Q. What was your role at UEP with</p> <p>25 regard to the proceedings before what I'll</p>

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420	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 refer to as NAD?</p> <p>3 A. I was the person working with</p> <p>4 our counsel and made our response known and</p> <p>5 presented our case.</p> <p>6 Q. Would you -- strike that.</p> <p>7 And your counsel is Brann &</p> <p>8 Isaacson. Correct?</p> <p>9 A. It was yes.</p> <p>10 Q. The counsel you just referred</p> <p>11 to -- sorry to interrupt. But the counsel</p> <p>12 you just referred to was Brann & Isaacson.</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you worked with Brann &</p> <p>16 Isaacson -- strike that. You already said</p> <p>17 that.</p> <p>18 Brann & Isaacson made some</p> <p>19 written submissions as part of this process.</p> <p>20 Correct?</p> <p>21 A. I don't recall, but that's a</p> <p>22 possibility, yes.</p> <p>23 Q. Do you recall whether you gave</p> <p>24 input into any written submissions by Brann &</p> <p>25 Isaacson?</p>	422	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 what the National Advertising Division of the</p> <p>3 Council for Better Business Bureau is and</p> <p>4 what it does?</p> <p>5 A. Up until that time, I had very</p> <p>6 little understanding of what it was.</p> <p>7 Q. But based on your experience in</p> <p>8 this process, what is your understanding of</p> <p>9 what that division does?</p> <p>10 A. Other than the case with us, I</p> <p>11 don't know.</p> <p>12 Q. All right. So you report to</p> <p>13 the members that you say, "We wrote a summary</p> <p>14 for our attorney so that they might write a</p> <p>15 letter of response."</p> <p>16 A. Yes.</p> <p>17 Q. And if you look at the</p> <p>18 attachment, the first attachment is that</p> <p>19 summary that you are referencing. Correct?</p> <p>20 You know, why don't --</p> <p>21 A. Yes. Okay.</p> <p>22 Q. Why don't you -- it looks like</p> <p>23 you reviewed that. Why don't you briefly</p> <p>24 review the entire document. But we're only</p> <p>25 going to look at some specific portions.</p>
421	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: Again, I don't --</p> <p>5 I don't recall.</p> <p>6 - - -</p> <p>7 (Exhibit Gregory-43, 7/23/03</p> <p>8 Letter, Bates NL003518 - NL003526, was</p> <p>9 marked for identification.)</p> <p>10 - - -</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Let me hand you what we've</p> <p>13 marked Gregory-43. Why don't you -- well,</p> <p>14 first all, identify this as NL003518 through</p> <p>15 3526. And I'll ask if you can review the</p> <p>16 cover letter as one that you wrote on</p> <p>17 July 23, 2003, to all Animal Care Certified</p> <p>18 companies?</p> <p>19 A. Yes.</p> <p>20 Q. And you're reporting on the</p> <p>21 petition that had been filed by a group</p> <p>22 called Compassion Over Killing with the NAD.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have an understanding of</p>	423	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I mean, if you want to go ahead</p> <p>3 and ask me specific portions --</p> <p>4 MR. OLSON: Well, the thing is</p> <p>5 we have to change the tape so why</p> <p>6 don't we take a break. It's a good</p> <p>7 time for a break anyway.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MS. LEVINE: We're going to take</p> <p>10 a break. You can -- Gene, you do need</p> <p>11 a break. We've been going an hour and</p> <p>12 40 minutes. You can read that</p> <p>13 document when we come back on the</p> <p>14 record. Okay?</p> <p>15 THE WITNESS: Okay.</p> <p>16 VIDEOGRAPHER: The time is</p> <p>17 approximately 10:38 a.m. This ends</p> <p>18 tape one, volume two. We're now off</p> <p>19 the record.</p> <p>20 - - -</p> <p>21 (A recess was taken.)</p> <p>22 - - -</p> <p>23 VIDEOGRAPHER: The time is</p> <p>24 approximately 10:54 a.m. This begins</p> <p>25 tape two, volume two. We're back on</p>

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<p style="text-align: right;">424</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the record.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Mr. Gregory, we were discussing</p> <p>5 Gregory-43. Now, this contains two</p> <p>6 attachments, the first are some materials</p> <p>7 that UEP had provided to UEP's attorney so</p> <p>8 UEP's attorney could draft a letter of</p> <p>9 response to the petition. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Were you involved in drafting</p> <p>12 these points provided to UEP's attorney?</p> <p>13 A. Yes.</p> <p>14 Q. Was anyone else from UEP</p> <p>15 involved in that?</p> <p>16 A. I don't recall.</p> <p>17 Q. There's a heading that says,</p> <p>18 "UEP Is Not Guilty of False Advertising</p> <p>19 Because."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And number 2 says, "The Animal</p> <p>23 Care Certified logo does not state or imply</p> <p>24 that these eggs are better than eggs marketed</p> <p>25 without the logo."</p>	<p style="text-align: right;">426</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 program..." et cetera, and "...required an</p> <p>3 egg production company to implement the</p> <p>4 guidelines on 100% of their production</p> <p>5 facilities regardless of where and how eggs</p> <p>6 were marketed." Right?</p> <p>7 A. Yes.</p> <p>8 Q. That 100 percent rule, that</p> <p>9 only required -- that only applies to the</p> <p>10 cage space aspect. Correct?</p> <p>11 A. No, no, no. No, that's not</p> <p>12 correct.</p> <p>13 Q. Well, a company could -- did</p> <p>14 not -- strike that.</p> <p>15 The company could pass the</p> <p>16 audit and be certified even if it didn't</p> <p>17 follow all the beak trimming recommendations</p> <p>18 on all of its facilities. Correct?</p> <p>19 MS. LEVINE: Objection.</p> <p>20 Mischaracterizes what the witness</p> <p>21 testified to.</p> <p>22 THE WITNESS: What this is</p> <p>23 stating up to this time is that it had</p> <p>24 previously been a voluntary program</p> <p>25 and that you could do this when you</p>
<p style="text-align: right;">425</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. That was your view at the time.</p> <p>5 Correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it continues to say, "The</p> <p>8 logo simply identifies that these eggs were</p> <p>9 produced by a company implementing the UEP</p> <p>10 guidelines." Right?</p> <p>11 A. Yes.</p> <p>12 Q. That was your view on what the</p> <p>13 logo communicated at the time. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if you look to the page</p> <p>16 that ends in 3521, there's a point number 4.</p> <p>17 A. Okay.</p> <p>18 Q. It says, "A committee of</p> <p>19 producers was formed for the purposes of</p> <p>20 taking the scientific recommendations and</p> <p>21 creating a set of Husbandry Guidelines."</p> <p>22 Right?</p> <p>23 A. Yes.</p> <p>24 Q. And then it says, "The producer</p> <p>25 committee went beyond the voluntary</p>	<p style="text-align: right;">427</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 wanted to, you could do this on</p> <p>3 individual houses if you wanted to,</p> <p>4 that kind of thing. By the time we</p> <p>5 had developed the program, if you now</p> <p>6 wanted to market those things as</p> <p>7 Animal Care Certified or use the</p> <p>8 Animal Care Certified logo, that was a</p> <p>9 reflection upon your business, not</p> <p>10 individual houses or not individual</p> <p>11 chickens.</p> <p>12 So if you wanted to use that</p> <p>13 label or that logo, then you were</p> <p>14 going to have to implement all of the</p> <p>15 guidelines on 100 percent of all of</p> <p>16 your layers. And it was still</p> <p>17 voluntary because if you -- you could</p> <p>18 steal these guidelines, you could do</p> <p>19 these guidelines on your own if you</p> <p>20 wanted to, any part of them if you</p> <p>21 wanted to of your own business if you</p> <p>22 wanted to, but if you wanted to use</p> <p>23 this logo or you wanted to tell your</p> <p>24 consumer, your customer that you were</p> <p>25 an Animal Care Certified company, you</p>

27 (Pages 424 to 427)

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<p style="text-align: right;">428</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 had to do it on 100 percent of your</p> <p>3 facilities.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. But it's just not true that you</p> <p>6 had to implement all of the recommendations</p> <p>7 on all of your facilities. Right?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question. Asked and answered.</p> <p>10 THE WITNESS: That's -- the</p> <p>11 audit is to audit what you are doing</p> <p>12 and there are -- the goal is for you</p> <p>13 to do everything that's in this</p> <p>14 program.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. Right, but --</p> <p>17 A. You can, as you have -- are</p> <p>18 trying to allude to, you can pass an audit if</p> <p>19 there is -- if you miss -- if you fail</p> <p>20 points. Now, today the program requires you</p> <p>21 to get 185 points out of 200, and if you</p> <p>22 aren't real careful, you're going to fail</p> <p>23 that audit, so you better pay attention to</p> <p>24 everything.</p> <p>25 Q. Well, at this time, though, the</p>	<p style="text-align: right;">430</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 three times already.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Well, let's just make sure</p> <p>5 we're clear. For example, the beak trimming</p> <p>6 rules, a company could simply disregard those</p> <p>7 on some of their production facilities, they</p> <p>8 might lose some points, but they'd still pass</p> <p>9 the audit. That could happen. Right?</p> <p>10 MS. LEVINE: Objection. Asked</p> <p>11 and answered. Asked and answered.</p> <p>12 THE WITNESS: The audit would</p> <p>13 identify that you did not sufficiently</p> <p>14 meet that guideline.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. But you would still be</p> <p>17 certified?</p> <p>18 A. At that point in time you</p> <p>19 could. But...</p> <p>20 Q. So let's look at the next</p> <p>21 attachment which is dated July 14, 2003.</p> <p>22 A. Let me explain to you a little</p> <p>23 bit here. You see, when this thing went into</p> <p>24 effect, you already have pullets that are</p> <p>25 being grown that have already been beak</p>
<p style="text-align: right;">429</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 requirement that you implement the guidelines</p> <p>3 100 percent of your production facilities,</p> <p>4 that really only applied to the cage space</p> <p>5 rule?</p> <p>6 A. No.</p> <p>7 Q. You could pass the audit and be</p> <p>8 certified --</p> <p>9 A. That is separate, this is</p> <p>10 different because I told you earlier that the</p> <p>11 guidelines for the -- all aspects other than</p> <p>12 the cage space went into effect June 1, 2002,</p> <p>13 and you were expected to follow the</p> <p>14 guidelines. The audit procedures and the</p> <p>15 audit guidelines were set up were as a point</p> <p>16 scoring system so you could fail some things</p> <p>17 and still pass the audit.</p> <p>18 Q. You might have been expected to</p> <p>19 do things, but you weren't required to?</p> <p>20 MS. LEVINE: Objection. Asked</p> <p>21 and answered several times. You can</p> <p>22 answer.</p> <p>23 THE WITNESS: You're, again,</p> <p>24 bothering me with nitpicking something</p> <p>25 that I have tried to answer two or</p>	<p style="text-align: right;">431</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 trimmed or something. You have laying hens</p> <p>3 that's already in the house that may be</p> <p>4 molted different than the program requires</p> <p>5 and that kind of thing, so there are things</p> <p>6 that you cannot correct because they've</p> <p>7 already been done. And so here we're -- we</p> <p>8 are -- that's the reason for the 140, and</p> <p>9 170, and 185 points is that you cannot</p> <p>10 correct some things that have already been</p> <p>11 done to flocks. You can only do things from</p> <p>12 that point forward. That's right.</p> <p>13 Q. The second attachment is on</p> <p>14 Brann & Isaacson letterhead. And this is the</p> <p>15 response that was submitted to the director</p> <p>16 of the National Advertising Division on</p> <p>17 July 14, 2003. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Seeing this now, does it</p> <p>20 refresh your recollection about whether you</p> <p>21 reviewed this before it was submitted?</p> <p>22 A. I don't know that I reviewed.</p> <p>23 I attended the meeting with Brann & Isaacson</p> <p>24 and so whether I reviewed it prior or not, I</p> <p>25 don't know. But it stands on what it is.</p>

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<p style="text-align: right;">432</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. But in your role at UEP with</p> <p>3 regard to this proceeding, would you expect</p> <p>4 that you would have reviewed what your</p> <p>5 attorneys drafted before it was submitted?</p> <p>6 A. That would be the -- that would</p> <p>7 be the normal practice, but what I'm saying</p> <p>8 to you today, that is nearly ten years ago</p> <p>9 and I don't recall whether I did or not.</p> <p>10 Q. I understand. But doing so</p> <p>11 would be consistent with your normal</p> <p>12 practice. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. And here you are distributing</p> <p>15 it to UEP members, and by that time certainly</p> <p>16 you had reviewed it. Correct?</p> <p>17 MS. LEVINE: Objection to the</p> <p>18 form of the question. Asked and</p> <p>19 answered several times now.</p> <p>20 THE WITNESS: That should have</p> <p>21 been, yes, the case.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. So the first page of this Brann</p> <p>24 & Isaacson submission there's a heading that</p> <p>25 says, "Factual Background."</p>	<p style="text-align: right;">434</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did UEP make other false</p> <p>3 statements to the National Advertising</p> <p>4 Division, to your knowledge?</p> <p>5 MS. LEVINE: Objection to the</p> <p>6 form of the question. Objection to</p> <p>7 mischaracterizing.</p> <p>8 MR. OLSON: What am I</p> <p>9 mischaracterizing?</p> <p>10 MS. LEVINE: That UEP made a</p> <p>11 false statement. That's your opinion,</p> <p>12 certainly not Mr. Gregory's.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Is that your opinion, did UEP</p> <p>15 make a false statement?</p> <p>16 A. Again, that was ten years ago.</p> <p>17 Would never have been an intent to make a</p> <p>18 false statement. If a false statement was</p> <p>19 made --</p> <p>20 Q. I thought you just told us it</p> <p>21 was made. Was I wrong?</p> <p>22 A. Say that again.</p> <p>23 Q. I thought you just testified</p> <p>24 that these statements made in the submission</p> <p>25 to the National Advertising Division were</p>
<p style="text-align: right;">433</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Uh-huh.</p> <p>3 Q. And the first sentence says,</p> <p>4 "UEP is an egg industry trade association</p> <p>5 representing a majority of egg producers</p> <p>6 nationwide." Correct?</p> <p>7 A. Yes.</p> <p>8 Q. True statement?</p> <p>9 A. No.</p> <p>10 Q. Let's turn the page to the</p> <p>11 third page of the submission that says,</p> <p>12 "False Advertising and Misrepresentation."</p> <p>13 A. Yes.</p> <p>14 Q. There's an opening paragraph</p> <p>15 that starts "As an initial matter..."</p> <p>16 Do you see that?</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. The concluding sentence of that</p> <p>19 paragraph says, "UEP is a</p> <p>20 trade organization -- it does not sell eggs</p> <p>21 to consumers."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. True statement?</p> <p>25 A. No.</p>	<p style="text-align: right;">435</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 false?</p> <p>3 A. They're false in the fact that</p> <p>4 he's using the terminology of a trade</p> <p>5 association instead of having said a</p> <p>6 cooperative.</p> <p>7 Q. So my question is, are you</p> <p>8 aware of any other false statements that UEP</p> <p>9 made to the National Advertising Division?</p> <p>10 MS. LEVINE: Objection to</p> <p>11 mischaracterizing the witness'</p> <p>12 testimony.</p> <p>13 THE WITNESS: I am not.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. If you look back to your points</p> <p>16 that you had provided to your attorneys,</p> <p>17 under the heading "UEP Is Not Guilty of False</p> <p>18 Advertising Because," there's a point 1 that</p> <p>19 says "UEP has not paid for advertising in any</p> <p>20 public manner."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that a true statement?</p> <p>24 A. Yes. It was at that time</p> <p>25 anyway.</p>

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<p style="text-align: right;">436</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. As of that time?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay, you can put that aside.</p> <p>5 - - -</p> <p>6 (Exhibit Gregory-44, 8/27/03</p> <p>7 United Voices, Bates UE0875279 -</p> <p>8 UE075289, was marked for identification.)</p> <p>9 - - -</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Let me hand you what we've</p> <p>12 marked Gregory-44.</p> <p>13 A. Do I ever get to tell you the</p> <p>14 real story about the Better Business Bureau</p> <p>15 and how it all turned out?</p> <p>16 Q. Absolutely.</p> <p>17 A. Do you? Okay. Good. Because</p> <p>18 it's a good story. And we made good changes</p> <p>19 because of that.</p> <p>20 Q. Because you stopped calling it</p> <p>21 an Animal Care Program. Right?</p> <p>22 MS. LEVINE: Objection to the</p> <p>23 form of the question.</p> <p>24 THE WITNESS: Not necessarily</p> <p>25 that.</p>	<p style="text-align: right;">438</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Bureau showed his colors. And in the end,</p> <p>3 and I can't quote exactly, but in the end the</p> <p>4 Review Board said that this logo could be</p> <p>5 misleading to some consumers because we had</p> <p>6 done nothing to educate consumers. And while</p> <p>7 this was not necessarily a reason to find</p> <p>8 that the logo was in fault, but they thought</p> <p>9 that if we wanted to use a logo, that we</p> <p>10 should have a logo that had a reference to</p> <p>11 where these guidelines were at and that we</p> <p>12 should have a Web site where consumers could</p> <p>13 go to to get information. By the time we got</p> <p>14 back to writing the Better Business Bureau</p> <p>15 Review Board a letter saying we agree with</p> <p>16 your review and the answers you provided, and</p> <p>17 we are going to make these changes, by the</p> <p>18 time they got the letter, their animal</p> <p>19 activist lawyer had already sent a complaint</p> <p>20 to the Federal Trade Commission. And we</p> <p>21 willingly went to the Federal Trade</p> <p>22 Commission and had good meetings with the</p> <p>23 Federal Trade Commission and said we</p> <p>24 understand that the Better Business Bureau</p> <p>25 Review Panel has made some good</p>
<p style="text-align: right;">437</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. That's the change you made.</p> <p>4 Right?</p> <p>5 A. What we did, we appealed the</p> <p>6 Better Business Bureau ruling. And the</p> <p>7 reason why we appealed it, it was quickly</p> <p>8 determined when we attended that meeting that</p> <p>9 the Better Business Bureau had a lawyer</p> <p>10 representing them who was a real animal</p> <p>11 activist and was in support of Compassion</p> <p>12 Over Killing because of his belief in the</p> <p>13 animal activist movement. We recognized that</p> <p>14 very quickly and determined very quickly that</p> <p>15 we were not going to win at this level. So</p> <p>16 we paid \$1,000 I think it was, and appealed</p> <p>17 that ruling before their -- I forget what the</p> <p>18 panel is.</p> <p>19 Q. NARB?</p> <p>20 A. Yes, I think that's right.</p> <p>21 Went to New York City, I believe it was. And</p> <p>22 in that -- in our appeal we had I thought</p> <p>23 some really fair minded business people that</p> <p>24 served on that review board. Again, the</p> <p>25 animal activist lawyer for Better Business</p>	<p style="text-align: right;">439</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 recommendations, and we're willing to make a</p> <p>3 change in the name of the program, we're</p> <p>4 willing to do all kinds of things. And</p> <p>5 through a period of meetings with the Federal</p> <p>6 Trade Commission, we reached an agreement</p> <p>7 which I think resulted in a much better</p> <p>8 communication. While it had never been</p> <p>9 viewed before as a consumer logo, now we</p> <p>10 understood that it needed to be a consumer</p> <p>11 logo and we made changes which I think were</p> <p>12 good changes. And while it was irritating to</p> <p>13 have to go through all of this, I would at</p> <p>14 this point in time thank the Compassion Over</p> <p>15 Killing for having challenged us and caused</p> <p>16 us to make changes.</p> <p>17 Q. And the change UEP agreed to</p> <p>18 make to resolve the investigation by the</p> <p>19 United States Federal Trade Commission</p> <p>20 involved no longer calling the program an</p> <p>21 Animal Care Program. Right?</p> <p>22 A. Yes. Yes.</p> <p>23 Q. And that was a good change.</p> <p>24 Right?</p> <p>25 A. Yes.</p>

30 (Pages 436 to 439)

440	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now, I've handed you what's</p> <p>3 been marked Gregory Exhibit 44. It's Bates</p> <p>4 stamp UE0875279 through 89. I'll ask if you</p> <p>5 can identify it as a United Voices</p> <p>6 publication you edited dated August 27, 2003?</p> <p>7 A. Yes.</p> <p>8 Q. Let's just look at page 4,</p> <p>9 there's a section titled, "Why Are Prices</p> <p>10 High?" And I'd ask if you could give that a</p> <p>11 brief review.</p> <p>12 A. (Reviewing document.)</p> <p>13 I've read it.</p> <p>14 Q. This -- you wrote this,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. This indicates that prices had</p> <p>18 begun to rise at this point. Right?</p> <p>19 A. Yes.</p> <p>20 Q. Or they had risen. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And some customers of UEP</p> <p>23 members had started to ask why that was</p> <p>24 happening. Right?</p> <p>25 A. Yes.</p>	442	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm not sure I understand that or</p> <p>3 recall that.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Well, what I'm asking is, do</p> <p>6 you recall people saying to you to be careful</p> <p>7 about attributing the price increases that</p> <p>8 were occurring to the program's space -- cage</p> <p>9 space guidelines?</p> <p>10 MS. LEVINE: Objection. Asked</p> <p>11 and answered.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. In other words, people told you</p> <p>14 you shouldn't be doing that?</p> <p>15 A. They may have. I don't recall.</p> <p>16 Q. You can put that aside.</p> <p>17 - - -</p> <p>18 (Exhibit Gregory-45, 9/11/03</p> <p>19 United Voices, Bates UE0875297 -</p> <p>20 UE0875304, was marked for</p> <p>21 identification.)</p> <p>22 - - -</p> <p>23 BY MR. OLSON:</p> <p>24 Q. I'm going to hand you what</p> <p>25 we've marked as Gregory-45. This is Bates</p>
441	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And at this point, you</p> <p>3 identified one of the major reasons for that</p> <p>4 happening as UEP members implementing space</p> <p>5 allowance to meet the -- what you were</p> <p>6 calling the animal welfare guidelines.</p> <p>7 Correct?</p> <p>8 A. First of all, I am not an</p> <p>9 economist. I am simply trying to evaluate</p> <p>10 things that may have been contributors to it.</p> <p>11 Q. You identified the space</p> <p>12 allowance implementation as one of the major</p> <p>13 reasons why you believed price levels were</p> <p>14 increasing. Correct?</p> <p>15 A. Again, I'm not an economist,</p> <p>16 but that was my personal opinion that I</p> <p>17 thought that was part of several reasons why</p> <p>18 the prices were -- had risen.</p> <p>19 Q. And you recall being cautioned</p> <p>20 by some folks that you should avoid</p> <p>21 attributing price increases in the industry</p> <p>22 to that factor?</p> <p>23 MS. LEVINE: Objection to form</p> <p>24 of the question.</p> <p>25 THE WITNESS: I'm not sure I --</p>	443	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 stamped UE0875297 through 304.</p> <p>3 I'll ask if you can identify it</p> <p>4 as a United Voices publication you edited</p> <p>5 from September 11, 2003?</p> <p>6 A. Yes.</p> <p>7 Q. The top heading is "UEP Staff</p> <p>8 Thankful After Area Meetings."</p> <p>9 A. Okay.</p> <p>10 Q. Why don't you just briefly</p> <p>11 review the whole first page, please.</p> <p>12 A. (Reviewing document.)</p> <p>13 Okay.</p> <p>14 Q. All right. This references</p> <p>15 some of those area meetings we discussed</p> <p>16 before. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. You attended those?</p> <p>19 A. Had we discussed area meetings</p> <p>20 before? I'm not sure.</p> <p>21 Q. I thought we had. In any case</p> <p>22 this references some area meetings that you</p> <p>23 had attended with other UEP staff. Right?</p> <p>24 A. Yes.</p> <p>25 Q. And the third paragraph</p>

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<p style="text-align: right;">444</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 references Animal Care Certified producers</p> <p>3 being given a packet of material that will</p> <p>4 assist them locally to promote the program</p> <p>5 and educate their egg buyers and local</p> <p>6 consumers. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Is that consistent with what</p> <p>9 UE -- the positions UEP took before the</p> <p>10 Better Business Bureau?</p> <p>11 A. Ask the question again, please.</p> <p>12 Q. Is that consistent with the</p> <p>13 positions that UEP was taking before the</p> <p>14 Better Business Bureau at this time about</p> <p>15 whether the program was being promoted to</p> <p>16 consumers?</p> <p>17 A. You mean like the requirement</p> <p>18 that we change that logo was sometime in</p> <p>19 September 2013, but I'm not certain about</p> <p>20 that. And I'm not certain about this here</p> <p>21 ten years later either about local champions</p> <p>22 or a pack of material. I'm trying to</p> <p>23 remember whether at that time we had</p> <p>24 contracted with a public relations firm or</p> <p>25 not. I guess it could have been something</p>	<p style="text-align: right;">446</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 by increasing egg supplies through holding</p> <p>3 hens longer and keeping hens that should be</p> <p>4 disposed." Right?</p> <p>5 A. Yes.</p> <p>6 Q. And that second portion,</p> <p>7 "keeping hens that should be disposed," does</p> <p>8 that refer to the backfilling practice among</p> <p>9 other things?</p> <p>10 A. No, I don't think that -- I</p> <p>11 think it's --</p> <p>12 Q. Well, if you have extra pullets</p> <p>13 and you can't backfill, what do you do with</p> <p>14 them besides dispose of them?</p> <p>15 A. You don't ever dispose of the</p> <p>16 pullets. You know, it's already on a</p> <p>17 schedule. You've got pullets growing for</p> <p>18 18 weeks, approximately 18 weeks, and then</p> <p>19 you move those pullets into the layer house.</p> <p>20 So you've got to schedule your layer house</p> <p>21 flock disposal to accommodate the new pullets</p> <p>22 that you've got coming in.</p> <p>23 Q. But if you had greater than</p> <p>24 expected success with your pullets, and you</p> <p>25 don't have room in an empty layer house, what</p>
<p style="text-align: right;">445</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 they had done. I don't know.</p> <p>3 Q. There's a heading that says,</p> <p>4 "Don't Screw Up A Good Thing."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. You wrote that. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. This indicates that prices had</p> <p>10 been going up, but then there's some bad news</p> <p>11 in terms of learning that producers seem to</p> <p>12 be keeping hens longer than they had in the</p> <p>13 past. Right?</p> <p>14 A. Yes.</p> <p>15 Q. And if you turn to the next</p> <p>16 page, you also indicate that "Backfilling of</p> <p>17 layer houses may also be adding to the</p> <p>18 increasing layer inventory."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I see that. Yes.</p> <p>21 Q. That was a concern at the time.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. You conclude this by saying,</p> <p>25 "One sure way of having poorer egg prices is</p>	<p style="text-align: right;">447</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 do you do with the pullets, the extra pullets</p> <p>3 if you don't backfill?</p> <p>4 A. I mean, that would just be</p> <p>5 really stupid if you would mix a young pullet</p> <p>6 18 weeks old with an old hen that's 100 weeks</p> <p>7 old that have a whole different history of</p> <p>8 health and disease issues or those kind of</p> <p>9 things. I mean --</p> <p>10 Q. So what do you do with the</p> <p>11 young pullet that you don't have room for in</p> <p>12 the layer house?</p> <p>13 A. I don't know that there is a</p> <p>14 case like that.</p> <p>15 Q. What's your understanding of</p> <p>16 what backfilling is?</p> <p>17 A. Backfilling is that you have</p> <p>18 this -- you have your layer house and you've</p> <p>19 been told how many -- on our certified</p> <p>20 program anyway, you've been told how many</p> <p>21 hens can go in that house. It was</p> <p>22 anticipated that as we phased into this</p> <p>23 program, that when we had, using a house</p> <p>24 average as I tried to explain to you</p> <p>25 yesterday, that we anticipate through normal</p>

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<p style="text-align: right;">448</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 mortality that if you had six birds in one</p> <p>3 cage and seven birds in another cage and</p> <p>4 through normal mortality you would take that</p> <p>5 seventh bird out of there and move it so that</p> <p>6 you average it out, what we're talking about</p> <p>7 backfilling is that we found egg producers</p> <p>8 that would have -- they have these laying</p> <p>9 hens in their house, they might be, I don't</p> <p>10 care, 50 weeks old, pick any week you want,</p> <p>11 and they've had some mortality now. And</p> <p>12 they've lost a certain percentage of their</p> <p>13 hands. So the farmers also at that same time</p> <p>14 now, he's going to be selling an older flock</p> <p>15 from another house. So what he was doing is</p> <p>16 taking birds from that older flock, older</p> <p>17 house, and bringing them back into this</p> <p>18 younger flock house and putting birds in</p> <p>19 cages that was mixing two different flocks</p> <p>20 together within the same house. So that's</p> <p>21 what backfilling is. It's not pullets, it's</p> <p>22 old layers or something coming back into the</p> <p>23 house.</p> <p>24 Q. So you never heard of a</p> <p>25 situation where a farmer has greater than</p>	<p style="text-align: right;">450</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 identification.)</p> <p>3 - - -</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Let me hand you what's been</p> <p>6 marked Gregory Exhibit 46. This document is</p> <p>7 Bates stamped NL001233 through 37.</p> <p>8 Why don't you, please, briefly</p> <p>9 review the document?</p> <p>10 A. (Reviewing document.)</p> <p>11 Q. Mr. Gregory, can you identify</p> <p>12 this as a document you authored titled, "An</p> <p>13 Economic Perspective"?</p> <p>14 A. Yes.</p> <p>15 Q. In October 2003. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you transmitted this to UEP</p> <p>18 members. Correct?</p> <p>19 A. I would assume so. It doesn't</p> <p>20 identify that. But I'm not sure who it was</p> <p>21 distributed to.</p> <p>22 Q. We received this document from</p> <p>23 the production of a UEP member and not from</p> <p>24 UEP's own production.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">449</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 expected livability from a pullet house and</p> <p>3 needs a place to put those extra pullets and</p> <p>4 uses backfilling to accomplish that?</p> <p>5 MS. LEVINE: Objection to the</p> <p>6 form of the question.</p> <p>7 THE WITNESS: You know, we put a</p> <p>8 provision in called incomplete flock</p> <p>9 to address -- but no, I don't know of</p> <p>10 that. That would be stupid, but I</p> <p>11 guess stupid does happen.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Well, what would be smart to do</p> <p>14 if you had greater than expected livability</p> <p>15 from your pullet flock and you don't have</p> <p>16 room for them in the existing layer house?</p> <p>17 A. You try to sell them to another</p> <p>18 egg farmer.</p> <p>19 Q. Anything else?</p> <p>20 A. I don't know what you're</p> <p>21 searching for, so I don't know.</p> <p>22 - - -</p> <p>23 (Exhibit Gregory-46, An Economic</p> <p>24 Perspective By: Gene Gregory, Bates</p> <p>25 NL001233 - NL001237, was marked for</p>	<p style="text-align: right;">451</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now, to the extent that you</p> <p>3 didn't publish this in United Voices, but</p> <p>4 transmitted it some different way, what are</p> <p>5 the different ways you could have transmitted</p> <p>6 it?</p> <p>7 A. I don't recall.</p> <p>8 Q. What are some potential ways?</p> <p>9 A. It could have been a direct</p> <p>10 mailing to just the Marketing Committee. It</p> <p>11 could have been a direct mailing to the Board</p> <p>12 of Directors. It could have been a direct</p> <p>13 mailing to the membership. I don't know.</p> <p>14 Q. Why would you have used a</p> <p>15 direct mailing as opposed to publishing</p> <p>16 something like this in United Voices?</p> <p>17 A. I have no idea. Well, first of</p> <p>18 all, United Voices is about four pages long.</p> <p>19 Right. And this here in itself is what, like</p> <p>20 five pages long, so it would have been the</p> <p>21 entire newsletter if that was the case.</p> <p>22 Q. Is it also -- would you also do</p> <p>23 that if the topics were sensitive?</p> <p>24 A. If you read my United Voices</p> <p>25 over the years, you know that I'm not careful</p>

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<p style="text-align: right;">452</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 enough about sensitive subjects.</p> <p>3 Q. So the only reason you can</p> <p>4 think of why this would have been sent by</p> <p>5 direct mailing as opposed to being published</p> <p>6 in United Voices is its length. Is that your</p> <p>7 testimony?</p> <p>8 A. That would be my opinion as of</p> <p>9 this time, yes.</p> <p>10 Q. So you start off by saying, "We</p> <p>11 are into extraordinary times that probably</p> <p>12 none of us have ever seen in our years in the</p> <p>13 egg business." Right?</p> <p>14 A. Yes.</p> <p>15 Q. And what you're referring to</p> <p>16 there is after four years of annual shell egg</p> <p>17 prices remaining virtually unchanged and very</p> <p>18 low, the industry had seen an explosion of</p> <p>19 prices beginning in November of 2002 that it</p> <p>20 continued for a full year. Right?</p> <p>21 A. Yes, that's what it says. Now,</p> <p>22 let me -- there is -- I don't believe there</p> <p>23 is anything wrong when egg farmers are losing</p> <p>24 money and maybe going to go broke if they</p> <p>25 don't pay attention and try to change that</p>	<p style="text-align: right;">454</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 document. It's Exhibit 13.</p> <p>3 A. Oh, okay.</p> <p>4 MS. LEVINE: Exhibit 13 he's</p> <p>5 looking at.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. So my question, Mr. Gregory,</p> <p>8 is, what bailed out the industry this time</p> <p>9 around?</p> <p>10 A. I think that I have identified</p> <p>11 in this document some reasons that I think</p> <p>12 have contributed to it. And I think that's</p> <p>13 on 1235. And, again, we have had a disease</p> <p>14 problem in California. We've had some</p> <p>15 exports. We believe based on AEB figures</p> <p>16 there have been increases in consumer demand.</p> <p>17 And the implementing of the Animal Welfare</p> <p>18 Program.</p> <p>19 Q. So in 1235 you identify the</p> <p>20 Animal -- the implementation of the animal</p> <p>21 welfare guidelines as a major reason for much</p> <p>22 of the price improvement. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And just to pause on the price</p> <p>25 improvement, if you turn to the page before</p>
<p style="text-align: right;">453</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and have egg prices that are profitable.</p> <p>3 Q. Now, let me just ask you this:</p> <p>4 We had looked at a document yesterday where</p> <p>5 you, in the middle of this real down period</p> <p>6 in the industry, had said this could be the</p> <p>7 worst egg price period in history. You --</p> <p>8 A. It didn't turn out to be that</p> <p>9 way, but at that time I thought so.</p> <p>10 Q. You recall back in the 1960s,</p> <p>11 the prior worst period, and you said what</p> <p>12 finally bailed us out of that was this</p> <p>13 disease called the Marek's disease which</p> <p>14 caused the death of a large percentage of the</p> <p>15 flock size in the industry. Right?</p> <p>16 A. That was one of the reasons I</p> <p>17 thought.</p> <p>18 Q. And then you also talked about</p> <p>19 a period of really low prices in the late</p> <p>20 1980s. You said what finally bailed us out</p> <p>21 of that period was the avian influenza which</p> <p>22 again caused the death and destruction of</p> <p>23 several million hens. Right?</p> <p>24 A. You have a good memory.</p> <p>25 Q. I'm also looking at the</p>	<p style="text-align: right;">455</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 it, 1234, there's a portion that you say,</p> <p>3 "Let's review the extent of the price turn</p> <p>4 around."</p> <p>5 A. Okay.</p> <p>6 Q. Do you see where you say that?</p> <p>7 A. Yes.</p> <p>8 Q. And then you first list "Shell</p> <p>9 Eggs," and you talk about the price</p> <p>10 turnaround for shell eggs. Right?</p> <p>11 A. Yes.</p> <p>12 Q. And then you identify "Breaking</p> <p>13 Stock," and you identify the turnaround for</p> <p>14 breaking stock. Right?</p> <p>15 A. Yes.</p> <p>16 Q. You identify "Unpasteurized</p> <p>17 Whole," and you discuss the price turnaround</p> <p>18 for that category. Right?</p> <p>19 A. Right.</p> <p>20 Q. Same with "Pasturized Whole."</p> <p>21 Right?</p> <p>22 A. Uh-huh.</p> <p>23 Q. You need to say yes or no,</p> <p>24 please.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">456</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And then --</p> <p>3 A. Shaking my head is not enough?</p> <p>4 Q. Not enough for our court</p> <p>5 reporter.</p> <p>6 And then "Dried Whole Plain,"</p> <p>7 and you identify the price turnaround for</p> <p>8 that as well. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And those are the major</p> <p>11 categories of eggs. Right?</p> <p>12 A. As I recall, that is the</p> <p>13 categories that is a market quote that is</p> <p>14 made by Urner Barry.</p> <p>15 Q. And the point you're making</p> <p>16 here is that whatever factors are causing it,</p> <p>17 those factors have had a common impact on</p> <p>18 those different egg categories. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, if you turn back to 1235,</p> <p>21 when you say, "While UEP's animal welfare</p> <p>22 guidelines were never spoken of as a supply</p> <p>23 adjustment program..." are you saying that</p> <p>24 as a result of any caution that you received?</p> <p>25 A. No. I'm saying that because</p>	<p style="text-align: right;">458</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that house to give them that much more space.</p> <p>3 Now, these are generalities.</p> <p>4 So now you're going to need to build new</p> <p>5 buildings to have enough eggs to accommodate</p> <p>6 your customers. You do not want to go out</p> <p>7 and build a building for 20,000 birds because</p> <p>8 it doesn't fit the system. It's just is</p> <p>9 not -- and it would be economically stupid to</p> <p>10 do so. So what you do, you build another</p> <p>11 100,000 bird building because that fits the</p> <p>12 system right. Now, all of a sudden you have</p> <p>13 created an ownership of 80,000 more hens here</p> <p>14 by which you did not have a market for those</p> <p>15 eggs yet. So there was going to be -- in the</p> <p>16 Animal Care Certified Program, there was</p> <p>17 going to be periods in which the industry had</p> <p>18 not built quick enough, there was going to be</p> <p>19 other periods in the years in which they</p> <p>20 built too quickly and too much.</p> <p>21 So that's what I'm trying to do</p> <p>22 is I'm trying to explain at this point in</p> <p>23 time, I think that it is having an impact</p> <p>24 upon the price of eggs and that you will read</p> <p>25 later on in history where I am saying that we</p>
<p style="text-align: right;">457</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 the Animal Welfare Program was intended as</p> <p>3 solely a program to improve the welfare of</p> <p>4 animals and to respond to a public issue that</p> <p>5 our customers wanted an industry program to</p> <p>6 address. It was not started nor ever</p> <p>7 intended as a supply adjustment program. But</p> <p>8 I have to tell you that I know by the way the</p> <p>9 phase-in schedule was, and the fact that they</p> <p>10 would be reducing birds in houses over the</p> <p>11 years, that there would be -- until we had a</p> <p>12 chance to build the new buildings, there was</p> <p>13 going to be periods that I thought that the</p> <p>14 prices would rise because -- and I apologize</p> <p>15 not for that, because we had just gone</p> <p>16 through having lost lots and lots of money,</p> <p>17 so, yes, I'm trying to be honest and say,</p> <p>18 yes, I think it is. Now, if you go forward</p> <p>19 in the years from that, and I also</p> <p>20 anticipated that that was going to happen,</p> <p>21 that as you build a house, let me explain</p> <p>22 this to you, if you have a house that has</p> <p>23 100,000 birds in, that once you go through</p> <p>24 the full six-year phase-in period, you're</p> <p>25 going to have to take 20,000 birds out of</p>	<p style="text-align: right;">459</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 are building too much too quick and that is</p> <p>3 causing the egg prices to drop.</p> <p>4 Q. And even -- and just --</p> <p>5 A. Now, they are all part of a</p> <p>6 bigger picture that, you know, disease may be</p> <p>7 happening at times. There may be other</p> <p>8 factors, but I'm trying to be honest about</p> <p>9 the fact and say I think this is what is</p> <p>10 occurring.</p> <p>11 Q. And one of the things that</p> <p>12 you're doing in this report in October 2003</p> <p>13 is cautioning the members of the program not</p> <p>14 to fall into that pitfall of over producing</p> <p>15 that you just identified. Right?</p> <p>16 MS. LEVINE: Objection to form</p> <p>17 of the question. Asked and answered.</p> <p>18 THE WITNESS: I'm telling them</p> <p>19 individually take a look at your own</p> <p>20 business and who your -- what you need</p> <p>21 to fill your customers and that kind</p> <p>22 of thing, and to be smart about how</p> <p>23 you are -- how you are -- when and how</p> <p>24 you're going to replace that</p> <p>25 production that you've lost.</p>

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<p style="text-align: right;">460</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. And cautioning them not to over</p> <p>4 produce?</p> <p>5 A. Absolutely.</p> <p>6 Q. And the other thing that you're</p> <p>7 saying is for the first time, we actually as</p> <p>8 an industry have a road map --</p> <p>9 A. Yes.</p> <p>10 Q. -- for the future --</p> <p>11 A. Yes.</p> <p>12 Q. -- that is not going to just</p> <p>13 provide a short-term fix, but if we're all</p> <p>14 responsible, can give us a long-term</p> <p>15 opportunity. Correct?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question.</p> <p>18 THE WITNESS: No, I do not like</p> <p>19 nor agree with the word "fix."</p> <p>20 BY MR. OLSON:</p> <p>21 Q. I said opportunity. Long-term</p> <p>22 opportunity.</p> <p>23 A. What it is is a road map to say</p> <p>24 that for the first time ever, there has never</p> <p>25 been any plan that has identified how many</p>	<p style="text-align: right;">462</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 who it was, what it was, but yes, it does.</p> <p>3 Q. Do you recall the context that</p> <p>4 you were cautioned in, even though you don't</p> <p>5 recall the person?</p> <p>6 A. I'm going to have to say I</p> <p>7 don't know because I don't want to be --</p> <p>8 Q. You don't want to speculate?</p> <p>9 A. I don't want to speculate.</p> <p>10 Q. Fair enough. If it comes to</p> <p>11 you later, will you let us know?</p> <p>12 A. My memory clicks in sometimes a</p> <p>13 few minutes later.</p> <p>14 Q. Understandable. So if you ever</p> <p>15 remember something and want to circle back,</p> <p>16 let us know.</p> <p>17 A. Okay.</p> <p>18 Q. And you continue and say,</p> <p>19 "...and yet I believe that many producers</p> <p>20 believe these guidelines have been a major</p> <p>21 factor." Right?</p> <p>22 A. Yes, I said that.</p> <p>23 Q. That was your view at the time.</p> <p>24 Correct?</p> <p>25 A. That was my view at the time.</p>
<p style="text-align: right;">461</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 birds you should put in your house and when</p> <p>3 it should be and so forth. So we now have,</p> <p>4 for the UEP certified companies, we have a</p> <p>5 road map that tells us by such and such a</p> <p>6 date we need to place birds in such and such</p> <p>7 a space. That's what we're talking about.</p> <p>8 Q. So, and what you're referring</p> <p>9 to is the phase-in period?</p> <p>10 A. Yes.</p> <p>11 Q. So this road map is a road map</p> <p>12 over the course of that phase-in period?</p> <p>13 A. Yes.</p> <p>14 Q. You also state here that, this</p> <p>15 is on 1235, you say, "There are those of you</p> <p>16 that caution me against giving credit to the</p> <p>17 animal welfare program when speaking of</p> <p>18 improved prices..."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Does that refresh your</p> <p>22 recollection that you had been cautioned</p> <p>23 about giving credit to the program when</p> <p>24 speaking of improved prices?</p> <p>25 A. Yes, it does. I don't recall</p>	<p style="text-align: right;">463</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. You also say that you've heard</p> <p>3 from your friends in Europe who also were</p> <p>4 experiencing the highest egg prices on</p> <p>5 record, that their own price increase, the</p> <p>6 major reason for that was their own animal</p> <p>7 welfare guidelines. Right?</p> <p>8 A. Is that what I say?</p> <p>9 Q. The next paragraph on 1235.</p> <p>10 A. That's what I write in the</p> <p>11 paragraph. You know, I think that I -- in</p> <p>12 looking back upon this, I think that I made</p> <p>13 poor judgment and using the words "major</p> <p>14 reason," whether it was in the case of here</p> <p>15 in the U.S. or in Europe, because as noted</p> <p>16 there, there were other factors that were --</p> <p>17 may be more of a reason, but...</p> <p>18 Q. Right. Like the Atkins Diet?</p> <p>19 A. Well, that's what I talked</p> <p>20 about improved demand for eggs per capita</p> <p>21 consumption on the increase. This was</p> <p>22 happening at a time when the Atkins Diet was</p> <p>23 a real fad, and we saw a spike in egg</p> <p>24 consumption because the Atkins Diet was</p> <p>25 favorable to us.</p>

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<p style="text-align: right;">464</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And at times in the media, you</p> <p>3 were asked about egg prices and you had</p> <p>4 discussed the Atkins Diet. Correct?</p> <p>5 A. We -- I think we used that as a</p> <p>6 point of increase per capita consumption,</p> <p>7 yes.</p> <p>8 Q. But here in this direct</p> <p>9 communication to UEP members, you attribute</p> <p>10 the animal welfare cage space guidelines as a</p> <p>11 major reason for the price improvement.</p> <p>12 Right?</p> <p>13 MS. LEVINE: Objection to form</p> <p>14 of the question. The document speaks</p> <p>15 for itself.</p> <p>16 THE WITNESS: I think that I've</p> <p>17 already stated that I think I used bad</p> <p>18 judgment in using those words "major</p> <p>19 reason."</p> <p>20 BY MR. OLSON:</p> <p>21 Q. And when you say your friends</p> <p>22 in Europe also identified their own</p> <p>23 guidelines as a major reason, what friends in</p> <p>24 Europe are you referring to? If not by</p> <p>25 name --</p>	<p style="text-align: right;">466</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 making there is that now there's a</p> <p>3 recognition, there's actually a road map</p> <p>4 going forward. Right?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. Mischaracterizes</p> <p>7 what the witness has testified to.</p> <p>8 THE WITNESS: I can't ten years</p> <p>9 later tell you what the -- what I</p> <p>10 remember about that attitude.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Now, if you turn to 1236</p> <p>13 there's a paragraph that says, "To meet a</p> <p>14 market...we will certainly need to</p> <p>15 build...facilities." You say, "We must</p> <p>16 attempt to meet this market demand without</p> <p>17 over producing."</p> <p>18 A. Yes.</p> <p>19 Q. We talked about that concept.</p> <p>20 Is that a concept that you communicated</p> <p>21 directly to UEP members in personal</p> <p>22 conversations from time to time?</p> <p>23 A. I've written about it in United</p> <p>24 Voices. I've spoke about it at meetings and</p> <p>25 so forth. It's a commodity business and it's</p>
<p style="text-align: right;">465</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Well, you know, we are members</p> <p>3 of the -- of a world body called the</p> <p>4 International Egg Commission, and through</p> <p>5 that and we have been to egg farms in Europe</p> <p>6 so we established some friendships with egg</p> <p>7 farmers in Europe.</p> <p>8 Q. Now, at the bottom of 1235 you</p> <p>9 say, "...here in the U.S. the pullet hatch</p> <p>10 has decreased considerably as a result of the</p> <p>11 animal welfare guidelines..."</p> <p>12 Do you see that?</p> <p>13 MS. LEVINE: Where is this?</p> <p>14 MR. OLSON: Bottom of 1235.</p> <p>15 THE WITNESS: Yes, you see that.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. And that was your view at the</p> <p>18 time. Right?</p> <p>19 A. Yes. It would have been, yes.</p> <p>20 Q. And you say that while that was</p> <p>21 a benefit, "...maybe the biggest benefit has</p> <p>22 been an attitude change about the future."</p> <p>23 Right?</p> <p>24 A. Right.</p> <p>25 Q. And, again, the point you're</p>	<p style="text-align: right;">467</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 difficult to have every day the exact amount</p> <p>3 of supply and demand. But to knowingly over</p> <p>4 produce more eggs than what you have</p> <p>5 customers for is -- in my opinion, it's</p> <p>6 foolish business and that's what I have tried</p> <p>7 to communicate to the members. Your business</p> <p>8 model should be a -- should be to produce the</p> <p>9 number of eggs that your customers need and</p> <p>10 never short your customers.</p> <p>11 Q. And did other UEP members share</p> <p>12 that view with you?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question. Calls for a</p> <p>15 hypothetical.</p> <p>16 THE WITNESS: You know, I have</p> <p>17 written this as my perspective, these</p> <p>18 are my perspectives. I don't know</p> <p>19 whether that view was shared with</p> <p>20 producers.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Well, do you recall ever</p> <p>23 discussing this with others at UEP and</p> <p>24 learning that they also shared your view</p> <p>25 about not over producing?</p>

37 (Pages 464 to 467)

<p style="text-align: right;">468</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Objection. Calls</p> <p>3 for speculation. Asked and answered.</p> <p>4 THE WITNESS: Say that again,</p> <p>5 I'm sorry, Jan.</p> <p>6 MS. LEVINE: My objection was</p> <p>7 calls for speculation and the question</p> <p>8 has been asked and answered.</p> <p>9 THE WITNESS: I think that's</p> <p>10 sufficient if you don't mind.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Your counsel's answer you think</p> <p>13 is sufficient?</p> <p>14 A. Yes.</p> <p>15 MS. LEVINE: Mr. Gregory already</p> <p>16 answered the question you asked twice.</p> <p>17 MR. OLSON: Can you tell us what</p> <p>18 the answer is, Jan?</p> <p>19 MS. LEVINE: You can read it</p> <p>20 back. Can the court reporter, please,</p> <p>21 read back Mr. Olson's question and</p> <p>22 then Mr. Gregory's answer?</p> <p>23 MR. OLSON: No, no. Can you</p> <p>24 just tell us what the answer is, was</p> <p>25 it yes or no?</p>	<p style="text-align: right;">470</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 per hen to meet UEP's animal welfare</p> <p>3 guidelines gives us a planned program whereby</p> <p>4 the industry has a road map for the future."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. What point are you looking at?</p> <p>8 A. I'm again trying to say that</p> <p>9 this is the only plan that's ever been</p> <p>10 developed which tells you that the number of</p> <p>11 hens that you can put in your house at these</p> <p>12 periods of times in the future, in your</p> <p>13 existing houses.</p> <p>14 Q. If you look at 1237, the top</p> <p>15 you write "It appears that our retail and</p> <p>16 food service markets have learned to live</p> <p>17 with and accept \$1.00 per dozen egg prices."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. "It appears that consumers have</p> <p>21 not reduced their purchases at these prices."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Was that your -- consistent</p> <p>25 with your knowledge at the time?</p>
<p style="text-align: right;">469</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. BARNES: Counsel, I'm going</p> <p>3 to object to this. This is a gross</p> <p>4 waste of time. Ask your questions and</p> <p>5 proceed with the examination.</p> <p>6 MR. OLSON: Counsel is convinced</p> <p>7 it's been answered --</p> <p>8 MR. BARNES: It's also</p> <p>9 unprofessional.</p> <p>10 MS. LEVINE: We can read it back</p> <p>11 on the record.</p> <p>12 MR. OLSON: She doesn't know</p> <p>13 what answer to read back. Do you know</p> <p>14 what --</p> <p>15 MS. LEVINE: Can you read back</p> <p>16 the last couple questions Mr. Olson</p> <p>17 has asked?</p> <p>18 MR. OLSON: We'll move on.</p> <p>19 We'll move on.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. Mr. Gregory, if you look at</p> <p>22 1236.</p> <p>23 A. Yes.</p> <p>24 Q. You write, "Only the continued</p> <p>25 support by the industry for increasing space</p>	<p style="text-align: right;">471</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And then in the third paragraph</p> <p>4 there, you say, "Again, I would say to you</p> <p>5 that all other programs and ideas are</p> <p>6 short-lived. Only the Animal Care Certified</p> <p>7 program has a planned program for the</p> <p>8 future."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Is that the same point that you</p> <p>12 just articulated?</p> <p>13 A. My point is that I'll supply</p> <p>14 demand recommendations to adjust times when</p> <p>15 we were -- the industry was losing money or</p> <p>16 whether U.S. Egg Marketers' exports or</p> <p>17 whatever, they are only short fixes, short</p> <p>18 time things. What we're talking about here</p> <p>19 is if we have a plan for basically six years</p> <p>20 and beyond that says that you can -- now, it</p> <p>21 doesn't talk about new housing or anything,</p> <p>22 but the housing, the existing housing at that</p> <p>23 time, you're telling me that there is a road</p> <p>24 map of how many birds can you put in those</p> <p>25 houses during those days.</p>

38 (Pages 468 to 471)

<p style="text-align: right;">472</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. In the next paragraph you say,</p> <p>3 "There are those that believe good profitable</p> <p>4 times will continue through 2004..." Right?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know what discussions</p> <p>7 that was based upon?</p> <p>8 A. I do not.</p> <p>9 Q. You say, "...while others</p> <p>10 believe we have a window of opportunity for</p> <p>11 up to three years."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know where that three</p> <p>15 years comes from?</p> <p>16 A. No, I do not.</p> <p>17 Q. And you say, "The decision of</p> <p>18 how long profitable prices continues is in</p> <p>19 the hands of egg producers and they</p> <p>20 collectively will decide the future for all."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What does the word</p> <p>24 "collectively" mean?</p> <p>25 A. I think it means as a</p>	<p style="text-align: right;">474</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 we also do things that is a benefit to the</p> <p>3 industry in developing food safety programs,</p> <p>4 working with UEP on environmental things.</p> <p>5 And we believe that is -- that the big</p> <p>6 picture is responding to public issues like</p> <p>7 animal welfare and working with scientists</p> <p>8 and the FMI and so forth to develop a</p> <p>9 credible program that is the best animal</p> <p>10 welfare program in the world and has been</p> <p>11 used as a model by other people. So we're</p> <p>12 still talking about 2003. Your lawsuit was</p> <p>13 filed in 2008. I'm saying to you, in</p> <p>14 consideration of the time that's allotted to</p> <p>15 you, I'm just saying I think we spent an</p> <p>16 awful lot of time on things that maybe is not</p> <p>17 what you're ultimately getting to, and so</p> <p>18 let's get to it.</p> <p>19 Q. All right. Let's do it.</p> <p>20 - - -</p> <p>21 (Exhibit Gregory-48, 11/13/03</p> <p>22 Fax, Bates NL01199471 - NL01199473,</p> <p>23 was marked for identification.)</p> <p>24 - - -</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">473</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 cooperative, you know, if we're talking</p> <p>3 about, and as UEP certified committee</p> <p>4 company, we're talking about all as such.</p> <p>5 Q. You can put that aside.</p> <p>6 A. You know, I'm going to follow</p> <p>7 up on Mr. Barnes' comment a minute ago. If I</p> <p>8 understood you to have 14 hours, and I want</p> <p>9 to tell my story because, again, I'm saying</p> <p>10 that I believe we're innocent and I'm</p> <p>11 offended by this lawsuit, but my point of it</p> <p>12 is, is that if you want to get through</p> <p>13 14 hours, I'm asking you not to just belabor</p> <p>14 the same point, the same point and nitpicking</p> <p>15 little things and let's talk about the big</p> <p>16 picture.</p> <p>17 Q. And what's the big picture?</p> <p>18 A. Well, I think the big picture</p> <p>19 is that we believe that United Egg Producers</p> <p>20 is a Capper-Volstead cooperative and the fact</p> <p>21 is with that, we have the opportunity to</p> <p>22 supply statistical information, supply</p> <p>23 recommendations to our members as an</p> <p>24 education with no commitment or penalty if</p> <p>25 they do not do those things. We believe that</p>	<p style="text-align: right;">475</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I've handed you what's marked</p> <p>3 Gregory Exhibit 48. I had already marked a</p> <p>4 47, we'll circle back to that, but...</p> <p>5 MS. LEVINE: This is 48.</p> <p>6 MR. OLSON: This is 48.</p> <p>7 MS. ANDERSON: There is no 47.</p> <p>8 MR. OLSON: I'll give it to you</p> <p>9 later. I marked it before we decided</p> <p>10 we should just get to the chase or get</p> <p>11 to what's really important.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. So, Mr. Gregory, this document</p> <p>14 is Bates stamped NL01199471 through 473. Can</p> <p>15 you identify --</p> <p>16 A. Well, first of all, let me ask</p> <p>17 you, why wouldn't this be privileged?</p> <p>18 MS. LEVINE: Mr. Gregory --</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Let's just proceed. Can</p> <p>21 you identify this as a document --</p> <p>22 MS. LEVINE: The court has</p> <p>23 already ruled on this, Mr. Gregory, so</p> <p>24 you can answer questions.</p> <p>25 BY MR. OLSON:</p>

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<p style="text-align: right;">476</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you identify this as a</p> <p>3 document that Brann & Isaacson sent to you</p> <p>4 and Mr. Pope on November 13, 2003?</p> <p>5 A. It appears so, although I did</p> <p>6 not check off on it, but I assume that I did</p> <p>7 read it.</p> <p>8 Q. You've seen this letter before.</p> <p>9 Right? Go ahead and review the letter.</p> <p>10 A. Pardon?</p> <p>11 Q. Please go ahead and review the</p> <p>12 letter.</p> <p>13 A. (Reviewing document.)</p> <p>14 I have scanned it.</p> <p>15 Q. Have you seen this letter</p> <p>16 before?</p> <p>17 A. Yes, I have seen it.</p> <p>18 Q. It was sent to you by the legal</p> <p>19 counsel of Sparboe Company. Correct?</p> <p>20 A. I don't know who sent it.</p> <p>21 Q. It was sent to Irving Isaacson,</p> <p>22 and it's signed by John Mueller who is the</p> <p>23 legal counsel for Sparboe Company. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. At the end of Mr. Mueller's</p>	<p style="text-align: right;">478</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 provide a written response to Mr. Mueller</p> <p>3 about what UEP had done to ensure that the</p> <p>4 Animal Welfare Program had been scrutinized</p> <p>5 from a thoroughly legal perspective?</p> <p>6 A. Before I answer that, and I</p> <p>7 will answer, let me tell you that I have no</p> <p>8 respect whatsoever for John Mueller and I did</p> <p>9 not spend -- I didn't bother to waste my time</p> <p>10 with him. Excuse me, Troy. And I think that</p> <p>11 history will prove that virtually everything</p> <p>12 that he claimed in 2003 was wrong.</p> <p>13 Q. Now can you answer the</p> <p>14 question?</p> <p>15 A. To answer your question, I</p> <p>16 think Irving Isaacson, I think I recall</p> <p>17 Irving Isaacson did respond to Mr. Mueller.</p> <p>18 Q. Because even if you don't like</p> <p>19 one of your members --</p> <p>20 A. He's not a member. He works</p> <p>21 for a member.</p> <p>22 Q. Even if you don't like someone</p> <p>23 who works for one of your members, when that</p> <p>24 member says can you provide us some assurance</p> <p>25 that this program has been scrutinized from a</p>
<p style="text-align: right;">477</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 letter, it says, "Finally, Irving, we are</p> <p>3 concerned that yourself or a reputably</p> <p>4 retained law firm and/or our justice</p> <p>5 department or all three, have not taken steps</p> <p>6 to reassure us members that the agricultural</p> <p>7 cooperative status still attaches to UEP</p> <p>8 trade association; and that the Animal</p> <p>9 Welfare initiatives there..."</p> <p>10 A. Where -- I'm sorry, where are</p> <p>11 you reading that, on the last page? Oh,</p> <p>12 okay, I see it. Yes.</p> <p>13 Q. "...and that the Animal Welfare</p> <p>14 initiatives there under have been scrutinized</p> <p>15 by concerned parties from a thoroughly legal</p> <p>16 perspective."</p> <p>17 Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. It says, "I would appreciate</p> <p>20 your written response as to what, if any,</p> <p>21 steps have been taken in this regard as</p> <p>22 well."</p> <p>23 Do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And, Mr. Gregory, did UEP</p>	<p style="text-align: right;">479</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 legal perspective and that you're convinced</p> <p>3 its protected, you have an obligation to</p> <p>4 provide answers to that. Right?</p> <p>5 A. And I believe our counsel did</p> <p>6 respond.</p> <p>7 Q. All right. Well, let me hand</p> <p>8 you what's been marked --</p> <p>9 A. I'm telling you my personal</p> <p>10 opinion about what his letter is.</p> <p>11 - - -</p> <p>12 (Exhibit Gregory-49, 11/19/03</p> <p>13 Letter, Bates UE0944695 & UE0944696,</p> <p>14 was marked for identification.)</p> <p>15 - - -</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Let me mark you -- let me mark</p> <p>18 what's been -- let me hand you what's been</p> <p>19 marked as Gregory-49.</p> <p>20 A. Let me point out to you also</p> <p>21 that UEP has a good relationship with Sparboe</p> <p>22 and Sparboe is a UEP certified company. And</p> <p>23 all the things that Mr. Mueller claimed in</p> <p>24 those days, you know, turned out to be just</p> <p>25 his opinion about things.</p>

40 (Pages 476 to 479)

<p style="text-align: right;">480</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. This is a document Bates</p> <p>3 stamped UE0944695 --</p> <p>4 A. I know I've said things here</p> <p>5 that's on the record won't be appreciated by</p> <p>6 Mr. Mueller at Sparboe, but I don't care.</p> <p>7 Q. -- through 696.</p> <p>8 Are there other UEP members</p> <p>9 that you have no respect for?</p> <p>10 A. No.</p> <p>11 MS. LEVINE: Objection to the</p> <p>12 form of the question.</p> <p>13 THE WITNESS: No, no. Wait a</p> <p>14 second. I don't have -- I never said</p> <p>15 I didn't have respect for the Sparboe</p> <p>16 Company, did I?</p> <p>17 BY MR. OLSON:</p> <p>18 Q. A company is not really a</p> <p>19 person. I mean, are there any other --</p> <p>20 A. You're fishing and I'm --</p> <p>21 Q. -- officers at UEP -- that are --</p> <p>22 A. No, but you're fishing and</p> <p>23 you're wasting time.</p> <p>24 Q. -- that you don't respect? Is</p> <p>25 the answer no, Mr. Mueller is the only one?</p>	<p style="text-align: right;">482</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 don't like in the industry?</p> <p>3 Q. Well, so I can note when I look</p> <p>4 at the documents.</p> <p>5 A. I don't know. I've tried to</p> <p>6 tell you this for the last three minutes.</p> <p>7 Q. That you don't know if there</p> <p>8 are others?</p> <p>9 A. Would you quit with nitpicking</p> <p>10 little crap like that.</p> <p>11 Q. Let's both stay respectful,</p> <p>12 sir.</p> <p>13 A. I am respectful. I'm tell you</p> <p>14 you've got so much time here and I'm walking</p> <p>15 out.</p> <p>16 Q. I'm not raising my voice,</p> <p>17 you're the only one doing that.</p> <p>18 A. Then pay a little bit for</p> <p>19 respect for me and quit nitpicking over</p> <p>20 something that says do you remember out of</p> <p>21 all the thousands of people that work in the</p> <p>22 egg industry that there's somebody you don't</p> <p>23 like.</p> <p>24 Q. Well, you made a pretty</p> <p>25 provocative comment about John Mueller and I</p>
<p style="text-align: right;">481</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Objection to form</p> <p>3 of the question. Mischaracterizes</p> <p>4 what Mr. Gregory said.</p> <p>5 THE WITNESS: There is probably</p> <p>6 hired employees, I don't know how many</p> <p>7 thousands of people work in the egg</p> <p>8 industry. But no, I don't know of any</p> <p>9 one that I --</p> <p>10 BY MR. OLSON:</p> <p>11 Q. I mean, you said that you have</p> <p>12 no respect whatsoever for John Mueller.</p> <p>13 A. I have no respect because he's</p> <p>14 writing a letter at that point in time that</p> <p>15 he's trying to talk about what it is</p> <p>16 without -- and he's making assumptions that</p> <p>17 has led to be a participant in this lawsuit.</p> <p>18 Q. My question is, are there any</p> <p>19 other officers or directors or legal counsel</p> <p>20 of any of your members that you have no</p> <p>21 respect for at all?</p> <p>22 A. Again, I'm asking why are you</p> <p>23 wasting time out of hundreds -- out of tens</p> <p>24 of thousands of people that's in the egg</p> <p>25 industry to see if I or there's somebody I</p>	<p style="text-align: right;">483</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 just want to know if there are other people</p> <p>3 we should know that you engaged with while</p> <p>4 you were UEP president that you have no</p> <p>5 respect for whatsoever or is he the only one?</p> <p>6 MR. McKENNEY: Objection. Asked</p> <p>7 and answered.</p> <p>8 MS. LEVINE: Why don't you move</p> <p>9 on, Mr. Olson.</p> <p>10 THE WITNESS: I mean, I'm going</p> <p>11 to say no, and you may pull out some</p> <p>12 document or something and then you're</p> <p>13 going trap me. This is not fair.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. I don't have a document in</p> <p>16 mind. I can swear to you I don't.</p> <p>17 A. I don't -- I love egg -- the</p> <p>18 industry. I love egg farmers. I -- you will</p> <p>19 not know how much time I spend with the</p> <p>20 people in this industry.</p> <p>21 Q. Just Mr. Mueller is the only</p> <p>22 one?</p> <p>23 A. I don't like Mr. Mueller</p> <p>24 because of the fact he makes these kind of</p> <p>25 things in that. That's my point.</p>

41 (Pages 480 to 483)

<p style="text-align: right;">484</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Didn't Mr. Mueller just ask if</p> <p>3 UEP --</p> <p>4 A. He makes -- he is making as</p> <p>5 such when he talks about prior -- he's</p> <p>6 talking about hidden agendas of the staff,</p> <p>7 he's talking about, you know, things that</p> <p>8 imply that we are doing things wrong and he</p> <p>9 is -- then he finally asked for him to do it.</p> <p>10 And so, therefore, I don't recall any other</p> <p>11 member that has ever written such a letter</p> <p>12 accusing staff of a hidden agenda.</p> <p>13 Q. Okay.</p> <p>14 A. And that's my objection and why</p> <p>15 I have no respect for Mr. Mueller because he</p> <p>16 has accused me of having a hidden agenda.</p> <p>17 Q. So in Gregory-49 is the</p> <p>18 document where Irving Isaacson responds to</p> <p>19 Mr. Mueller and addresses his questions.</p> <p>20 Right?</p> <p>21 A. It appears so, yes.</p> <p>22 Q. And Mr. Mueller had asked for a</p> <p>23 written response about what steps had been</p> <p>24 taken to ensure that the animal welfare</p> <p>25 initiatives had been thoroughly scrutinized</p>	<p style="text-align: right;">486</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 - - -</p> <p>4 (Exhibit Gregory-50, 12/5/03</p> <p>5 Letter, Bates MFI0001880 & MFI0001881,</p> <p>6 was marked for identification.)</p> <p>7 - - -</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Now, let me hand you what's</p> <p>10 been marked Gregory-50. Gregory-50 is Bates</p> <p>11 stamped MFI0001880 through 1881. And it's</p> <p>12 dated December 5, 2003, shortly after the</p> <p>13 document we just looked at written by Mr.</p> <p>14 Isaacson. This is where Chad Gregory is</p> <p>15 sending something to all UEP members as part</p> <p>16 of this effort to determine whether the</p> <p>17 members comply with the Capper-Volstead Act.</p> <p>18 Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, UEP had integrated</p> <p>21 companies as members. Correct?</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. In other words, integrated</p>
<p style="text-align: right;">485</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 by concerned parties from a legal</p> <p>3 perspective. Where in Gregory Exhibit 49 is</p> <p>4 that provided?</p> <p>5 A. And your question again was?</p> <p>6 Q. My question is this: Mr.</p> <p>7 Mueller had written Irving Isaacson and</p> <p>8 requested that you -- he get a written</p> <p>9 response about what steps, if any, had been</p> <p>10 taken to ensure that the animal welfare</p> <p>11 initiatives had been scrutinized from a</p> <p>12 thoroughly legal perspective, you requested a</p> <p>13 written response on that and where is that</p> <p>14 provided, if anywhere, in Gregory-49?</p> <p>15 A. I don't think it is.</p> <p>16 Q. It's not provided. In fact,</p> <p>17 the last sentence says, the response to Mr.</p> <p>18 Mueller, "As far as the Capper-Volstead</p> <p>19 status of UEP is concerned, as you can see</p> <p>20 from the compliance certificate that we are</p> <p>21 attempting to make sure that all UEP members</p> <p>22 qualify." Right?</p> <p>23 A. Yes.</p> <p>24 Q. That is all Mr. Mueller was</p> <p>25 given in response. Right?</p>	<p style="text-align: right;">487</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 between shell egg producing and other aspects</p> <p>3 of egg production?</p> <p>4 A. Yes.</p> <p>5 - - -</p> <p>6 (Exhibit Gregory-51, Various</p> <p>7 documents, Bates MOARK0038387 -</p> <p>8 MOARK0038396, was marked for</p> <p>9 identification.)</p> <p>10 - - -</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Let me hand you what's been</p> <p>13 marked as Gregory-51. This is a document</p> <p>14 Bates stamped MOARK0038387 through 38396.</p> <p>15 Have you seen this document</p> <p>16 before?</p> <p>17 MS. LEVINE: I'm just going to</p> <p>18 caution the witness, when Mr. Olson</p> <p>19 asks that, he asks prior to any kind</p> <p>20 of deposition prep or discussion with</p> <p>21 counsel. He's talking at the time.</p> <p>22 THE WITNESS: I don't recall</p> <p>23 seeing it -- this at the time.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. This is a document that was</p>

42 (Pages 484 to 487)

488	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 distributed to the UEP Marketing Committee.</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And the second bullet says,</p> <p>6 "The law is not well-developed regarding the</p> <p>7 protections afforded to integrated</p> <p>8 companies..." Right?</p> <p>9 A. Yes.</p> <p>10 Q. "...and to the scope of the</p> <p>11 exemption, particularly insofar as</p> <p>12 limitations on supply." Right?</p> <p>13 A. Yes.</p> <p>14 Q. At the bottom you see a</p> <p>15 reference to a "Grey area"?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "Agreements regarding</p> <p>18 supply of eggs to the market." Right?</p> <p>19 A. Yes.</p> <p>20 Q. Your lawyers have told you that</p> <p>21 that is a gray area. Right?</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. In this document, your lawyers</p>	490	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I will not</p> <p>3 acknowledge I did without the</p> <p>4 opportunity to explain it.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. We'll go over the documents</p> <p>7 later, but you did do that?</p> <p>8 A. I want to do that now.</p> <p>9 Q. So you're not going to answer</p> <p>10 the question?</p> <p>11 A. Yes, I'm going to answer the</p> <p>12 question.</p> <p>13 Q. The answer is you did contact</p> <p>14 customers of UEP members who had left the</p> <p>15 program. Right?</p> <p>16 A. You asked me a question and I</p> <p>17 am trying to provide you with an answer and</p> <p>18 you won't let me do so.</p> <p>19 Q. The answer is yes, right?</p> <p>20 A. I'm not going to answer it</p> <p>21 unless you provide me the opportunity to</p> <p>22 answer your question.</p> <p>23 Q. And you did that on multiple</p> <p>24 occasions. Right?</p> <p>25 MS. LEVINE: Object to the form</p>
489	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 are saying that's a gray area. Right?</p> <p>3 A. That's what's written here.</p> <p>4 Q. Page 2, there's a bullet that</p> <p>5 says, "Some absolutes." Second to the last</p> <p>6 bullet says, "There should be no attempt to</p> <p>7 boycott or curtail business with a nonmember</p> <p>8 regarding failure to follow guidelines or for</p> <p>9 that matter regarding any other issues."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. But you made efforts to</p> <p>13 organize a boycott of UEP members that</p> <p>14 weren't a part of the program. Right?</p> <p>15 A. No.</p> <p>16 MS. LEVINE: Objection to form</p> <p>17 of the question.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. You contacted the customers of</p> <p>20 UEP members that left the program. Right?</p> <p>21 A. So you want me to explain this?</p> <p>22 Q. First I want you to acknowledge</p> <p>23 that you did it.</p> <p>24 MS. LEVINE: Objection to form</p> <p>25 of the question.</p>	491	<p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3 THE WITNESS: You know, I object</p> <p>4 to your -- I object to you accusing me</p> <p>5 of something without allowing me to</p> <p>6 answer your question. I don't think</p> <p>7 that's proper for you to accuse me of</p> <p>8 something without allowing me to</p> <p>9 answer.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. And you tried to convince --</p> <p>12 A. This is ridiculous.</p> <p>13 Q. We'll get to those documents.</p> <p>14 A. No, I want to answer it now.</p> <p>15 Q. I just don't have them in front</p> <p>16 of me. We'll get to those documents.</p> <p>17 A. This is unfair.</p> <p>18 Q. I tried to give you an</p> <p>19 opportunity to answer the question.</p> <p>20 A. This is unfair.</p> <p>21 MS. LEVINE: Mr. Gregory, Mr.</p> <p>22 Gregory.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. If you don't want to answer it</p> <p>25 now, we'll do it when we got to the</p>

43 (Pages 488 to 491)

<p style="text-align: right;">492</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 documents. I just don't have them right in</p> <p>3 front of me.</p> <p>4 Were there any other UEP</p> <p>5 members that you ever recall suggesting that</p> <p>6 the Animal Welfare Program had a hidden</p> <p>7 agenda?</p> <p>8 A. No.</p> <p>9 Q. Do you ever recall any other</p> <p>10 members suggesting the program may be</p> <p>11 anticompetitive?</p> <p>12 A. No.</p> <p>13 - - -</p> <p>14 (Exhibit Gregory-47, 11/12/03</p> <p>15 United Voices, Bates UE0753377 -</p> <p>16 UE0753385, was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Let me hand you what's been</p> <p>21 marked Gregory-47. This is a document Bates</p> <p>22 stamped UE0753377 through 385.</p> <p>23 Let me ask you just a</p> <p>24 preliminary question. There's a reference in</p> <p>25 here to a USEM annual meeting. Were minutes</p>	<p style="text-align: right;">494</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 get on the phone and they would tell about</p> <p>3 what supply/demand conditions were in their</p> <p>4 area. They were either short of eggs, they</p> <p>5 were long on eggs, or they were doing some</p> <p>6 feature, the retail market was doing</p> <p>7 features, whatever it is, that kind of thing,</p> <p>8 and so Phyllis Blizzard took a call, she</p> <p>9 would jot down notes from that and then when</p> <p>10 the call was over with, she would call Urner</p> <p>11 Barry and she would report to Urner Barry</p> <p>12 what the comments were from this meeting.</p> <p>13 Q. Looking at Gregory Exhibit 47,</p> <p>14 if you turn to page 4, there's a heading that</p> <p>15 says, "Egg Prices At Record Levels."</p> <p>16 A. Yes.</p> <p>17 Q. You wrote this section.</p> <p>18 Correct?</p> <p>19 A. Yes. I thought we talked about</p> <p>20 this yesterday. I must be getting them mixed</p> <p>21 up.</p> <p>22 Q. This is just very brief. This</p> <p>23 will be a section you wrote. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the last sentence says,</p>
<p style="text-align: right;">493</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 taken of USEM meetings?</p> <p>3 A. If it's an official meeting, it</p> <p>4 should have been.</p> <p>5 Q. Were there regularly scheduled</p> <p>6 official meetings?</p> <p>7 A. No. They had -- just had one</p> <p>8 annual meeting a year as I recall.</p> <p>9 Q. And how would other meetings</p> <p>10 take place other than at the annual meeting?</p> <p>11 A. When we -- I don't know how to</p> <p>12 answer that. When we first took the</p> <p>13 management of U.S. Egg Marketers, they held a</p> <p>14 marketing conference call, I think it was</p> <p>15 three days a week. Other than that, I don't</p> <p>16 recall -- I don't consider those as meetings,</p> <p>17 but anyway -- I'll tell you that, but other</p> <p>18 than annual meeting, I don't recall.</p> <p>19 Q. Were minutes taken of the</p> <p>20 conference calls, to your knowledge?</p> <p>21 A. No.</p> <p>22 Q. Or so no one was tasked with</p> <p>23 writing down what had been discussed, to your</p> <p>24 knowledge?</p> <p>25 A. What it was, the members would</p>	<p style="text-align: right;">495</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 "With the increasing demand, increasing</p> <p>3 population and the continued phase-in of cage</p> <p>4 space to meet the industry's animal welfare</p> <p>5 guidelines, prices are likely to continue at</p> <p>6 levels far above the past few years." Right?</p> <p>7 A. Yes.</p> <p>8 Q. That was your view at the time.</p> <p>9 Correct?</p> <p>10 A. Yes.</p> <p>11 MR. OLSON: We can take a break</p> <p>12 any time you guys would like.</p> <p>13 MS. LEVINE: I was going to ask</p> <p>14 you, is this a good time?</p> <p>15 MR. OLSON: Now would be a fine</p> <p>16 time, yes.</p> <p>17 THE WITNESS: Let me ask you</p> <p>18 something.</p> <p>19 MR. OLSON: We need to go off</p> <p>20 the record.</p> <p>21 THE WITNESS: You've accused me</p> <p>22 of something.</p> <p>23 MS. LEVINE: Let's go off the</p> <p>24 record.</p> <p>25 THE WITNESS: You've accused me</p>

44 (Pages 492 to 495)

<p style="text-align: right;">496</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of something.</p> <p>3 VIDEOGRAPHER: The time is</p> <p>4 approximately 12:10 p.m. This ends</p> <p>5 tape two, volume two. We're now off</p> <p>6 the record.</p> <p>7 - - -</p> <p>8 (A recess was taken.)</p> <p>9 - - -</p> <p>10 VIDEOGRAPHER: The time is</p> <p>11 approximately 12:51 p.m. This begins</p> <p>12 tape three, volume two. We're back on</p> <p>13 the record.</p> <p>14 - - -</p> <p>15 (Exhibit Gregory-52, 12/5/03</p> <p>16 Memorandum, Bates NL000916 - NL000918,</p> <p>17 was marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Are you ready, Mr. Gregory?</p> <p>21 A. I'm ready.</p> <p>22 Q. I've handed you what we've</p> <p>23 marked Gregory-52. It's Bates stamped</p> <p>24 NL000916 through 918. And please review it</p> <p>25 and then I'll ask you to identify it. I'm</p>	<p style="text-align: right;">498</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of total U.S. layers) are committed to the</p> <p>3 Animal Care Certified program." Right?</p> <p>4 A. Yes.</p> <p>5 Q. And then you say, "While not a</p> <p>6 program requirement, many of these companies</p> <p>7 have made individual company decisions that</p> <p>8 they will not purchase eggs from</p> <p>9 non-certified producers."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. How did you know that?</p> <p>13 A. I think by this time, and</p> <p>14 excuse me if my timing is wrong, I think by</p> <p>15 this time we had probably put in a provision</p> <p>16 about the commingling of certified and</p> <p>17 non-certified eggs, and this was a --</p> <p>18 something that caused some companies to say</p> <p>19 that they were not going to take any chance,</p> <p>20 that they were not going to buy any eggs that</p> <p>21 were not from UEP certified companies.</p> <p>22 Q. So that's something that some</p> <p>23 of the certified companies had expressed to</p> <p>24 you and others. Right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">497</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 just really going to ask you a question about</p> <p>3 a couple of pieces of it.</p> <p>4 A. Do you want just to identify</p> <p>5 those or you want me to read the whole thing?</p> <p>6 Q. Let's try it without you</p> <p>7 reading the whole thing. I don't think it's</p> <p>8 necessary.</p> <p>9 A. Okay.</p> <p>10 Q. Can you identify this as a</p> <p>11 memorandum you sent to the certified</p> <p>12 companies on or about December 5, 2003?</p> <p>13 You'll see the date in the header.</p> <p>14 A. Oh, okay. Yes. Yes.</p> <p>15 Q. And I'd like you just to review</p> <p>16 the first section that is under the heading</p> <p>17 "Industry Commitment," and let me know when</p> <p>18 you're done, please.</p> <p>19 A. (Reviewing document.)</p> <p>20 I've read it.</p> <p>21 Q. Now, in that section you write,</p> <p>22 "While not a program requirement..." --</p> <p>23 strike that. Let me back up.</p> <p>24 First you refer to the fact</p> <p>25 "...that companies with ownership of...(83%</p>	<p style="text-align: right;">499</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you are, in turn, reporting</p> <p>3 that back to all of the Animal Care Certified</p> <p>4 companies in this letter?</p> <p>5 A. I was reporting back. However,</p> <p>6 there was no prohibition about buying eggs</p> <p>7 from non-certified producers so long as those</p> <p>8 eggs were not sold as certified.</p> <p>9 Q. You mean there was no formal</p> <p>10 prohibition?</p> <p>11 A. That's right.</p> <p>12 Q. But companies could agree not</p> <p>13 to do that?</p> <p>14 A. Yes, it was an individual</p> <p>15 decision.</p> <p>16 Q. And some companies had agreed</p> <p>17 not to do that?</p> <p>18 A. Right.</p> <p>19 Q. Now, if you look at the second</p> <p>20 page -- actually you can put that aside.</p> <p>21 A. That is your last question on</p> <p>22 that?</p> <p>23 Q. You know, we'll just move on,</p> <p>24 try to be as efficient as we can.</p> <p>25 - - -</p>

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<p style="text-align: right;">500</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Gregory-53, 1/21/04</p> <p>3 Letter, Bates UE0199015 - UE0199029,</p> <p>4 was marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. OLSON:</p> <p>7 Q. I'll hand you what we've marked</p> <p>8 as Gregory Exhibit 53. This is a document</p> <p>9 Bates stamped UE0199015 through 029. And</p> <p>10 I'll ask if you can identify this as the</p> <p>11 position statement that United Egg Producers</p> <p>12 submitted to the National Advertising Review</p> <p>13 Board on January 21, 2004?</p> <p>14 A. Looking at it now, yes, I</p> <p>15 assume that that is.</p> <p>16 Q. It's on the letterhead of your</p> <p>17 counsel in that regard which is Brann &</p> <p>18 Isaacson. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And what had happened by this</p> <p>21 date is that the National Advertising</p> <p>22 Division of the Better Business Bureau in an</p> <p>23 October 2003 decision had found that the</p> <p>24 Animal Care Certified logo was deceptive and</p> <p>25 that it should be discontinued. Correct?</p>	<p style="text-align: right;">502</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 your normal practice to review it before it</p> <p>3 was submitted?</p> <p>4 MS. LEVINE: Object to the form</p> <p>5 of the question. Asked and answered.</p> <p>6 THE WITNESS: I can't answer it?</p> <p>7 MS. LEVINE: You can answer it.</p> <p>8 THE WITNESS: I am sure that our</p> <p>9 counsel did share this with me in</p> <p>10 advance, and I would have had -- I</p> <p>11 would have had an opportunity to</p> <p>12 review it.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. And you played an active role</p> <p>15 in the appeal of the NAB finding. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And in the "Factual background"</p> <p>18 on page 1, the first sentence says, "UEP is</p> <p>19 an egg industry trade association</p> <p>20 representing a majority of egg producers</p> <p>21 nationwide." Correct?</p> <p>22 A. That's what it says, yes.</p> <p>23 Q. True statement?</p> <p>24 A. No.</p> <p>25 Q. If you turn to page 2, you'll</p>
<p style="text-align: right;">501</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: Yes, I think</p> <p>5 that's correct.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. And that's what this document</p> <p>8 indicates?</p> <p>9 A. Yes.</p> <p>10 Q. And this was UEP's position</p> <p>11 statement on appeal now to the National</p> <p>12 Advertising Review Board. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. That's a board that generally</p> <p>15 handles appeals from the decisions made by</p> <p>16 the NAB. Correct?</p> <p>17 A. I was not familiar with that</p> <p>18 before that, but yes, I assume that now.</p> <p>19 Q. And that's your understanding?</p> <p>20 A. Yes.</p> <p>21 Q. Now, in the factual -- and</p> <p>22 this -- do you know if you gave any input</p> <p>23 into the drafting of this document?</p> <p>24 A. I don't recall.</p> <p>25 Q. But it would have been part of</p>	<p style="text-align: right;">503</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 see the logo in the middle, there's a</p> <p>3 paragraph underneath that and there's a</p> <p>4 sentence that's the second from last sentence</p> <p>5 that says, "The unpaid and independent</p> <p>6 Committee..." that's referring to the</p> <p>7 Scientific Advisory Committee.</p> <p>8 A. Right.</p> <p>9 Q. "...included no egg producers."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. True statement?</p> <p>13 A. Yes.</p> <p>14 Q. Let's turn to page 4. The</p> <p>15 first full paragraph says, "The federal</p> <p>16 government has been an important partner of</p> <p>17 UEP in both the design and implementation of</p> <p>18 the program."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. How did the federal government</p> <p>22 work as a partner of UEP in designing the</p> <p>23 program?</p> <p>24 A. At this point in time, I can't</p> <p>25 recall. I only can remember that they</p>

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<p style="text-align: right;">504</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 reviewed it and approved the use of it.</p> <p>3 Q. Of what?</p> <p>4 A. Of the logo.</p> <p>5 Q. Of the logo. But they didn't</p> <p>6 help design the program? Is what you're</p> <p>7 referring to there just the logo?</p> <p>8 A. Yeah, the implementation of the</p> <p>9 program is confusing to me because I don't</p> <p>10 know any role that they played. There could</p> <p>11 have been something, but I don't know what it</p> <p>12 was.</p> <p>13 Q. Sitting here today, are you</p> <p>14 aware of the federal government playing a</p> <p>15 role in designing the program, putting the</p> <p>16 logo aside?</p> <p>17 A. I'm sorry, say that again?</p> <p>18 Q. Putting the logo aside --</p> <p>19 A. Yes.</p> <p>20 Q. -- are you aware sitting here</p> <p>21 today of the federal government playing any</p> <p>22 role in designing the UEP certified program?</p> <p>23 A. Well, nothing other than they</p> <p>24 were the auditing agency of the program.</p> <p>25 Q. Anything else?</p>	<p style="text-align: right;">506</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. (Reviewing document.)</p> <p>3 Yes, I've read it.</p> <p>4 Q. Does that refresh your</p> <p>5 recollection of this poll?</p> <p>6 A. Yes.</p> <p>7 Q. So Compassion Over Killing had</p> <p>8 either done a poll themselves or they had a</p> <p>9 group called Zogby do a poll of some</p> <p>10 consumers?</p> <p>11 A. Yes.</p> <p>12 Q. One of the key questions in the</p> <p>13 poll is identified on page 7. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. This question was asked of</p> <p>16 consumers, Knowing that eggs labeled as</p> <p>17 "Animal Care Certified" may come from hens</p> <p>18 who are de-beaked, force-molted through</p> <p>19 starvation, and caged so tightly that they</p> <p>20 cannot stretch their wings, are you much more</p> <p>21 likely, somewhat more likely, somewhat less</p> <p>22 likely, or much less likely basically to</p> <p>23 purchase the eggs with the label. Right?</p> <p>24 A. Yes.</p> <p>25 Q. I paraphrased at the end.</p>
<p style="text-align: right;">505</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I can't think of anything else.</p> <p>3 Q. Now, the petition that started</p> <p>4 these proceedings was filed by a group called</p> <p>5 Compassion Over Killing. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. You see them as an animal</p> <p>8 activist group. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Their petition was based at</p> <p>11 least in part on some poll they had</p> <p>12 conducted. Right?</p> <p>13 A. I don't -- that may say that, I</p> <p>14 don't know that for sure.</p> <p>15 Q. You don't recall the poll?</p> <p>16 A. No.</p> <p>17 Q. Okay. Why don't you turn then</p> <p>18 to page 7. Why don't you actually turn to</p> <p>19 page 6, and there's a heading that says,</p> <p>20 "Discussion."</p> <p>21 A. Okay.</p> <p>22 Q. And let's just see if you can</p> <p>23 review what's under "Discussion" on page 6</p> <p>24 and page 7, let's see if that refreshes your</p> <p>25 recollection.</p>	<p style="text-align: right;">507</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Now, in fact, it was true that</p> <p>4 eggs certified as Animal Care Certified eggs</p> <p>5 at this time could very well have come from</p> <p>6 hens who were de-beaked. Right?</p> <p>7 A. We use the term -- we use --</p> <p>8 de-beaked would imply that we have cut the</p> <p>9 beak off, and that's not true. We use the</p> <p>10 term "beak trimming."</p> <p>11 Q. Let's put that debate to one</p> <p>12 side. But hens who had their beaks</p> <p>13 trimmed --</p> <p>14 A. I don't think there's any</p> <p>15 debate there.</p> <p>16 Q. You don't -- there's a beak</p> <p>17 left --</p> <p>18 A. Oh, yeah, yeah, absolutely.</p> <p>19 Absolutely. All you do is you take off the</p> <p>20 sharp tip.</p> <p>21 Q. Well, we'll circle back to</p> <p>22 that.</p> <p>23 The eggs could have come from</p> <p>24 hens who are force molted through starvation.</p> <p>25 Correct?</p>

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<p style="text-align: right;">508</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. And that to the consumer</p> <p>3 implies, I think -- in other words, I think</p> <p>4 this whole question is a leading question to</p> <p>5 lead the consumer into believing very</p> <p>6 negative things.</p> <p>7 Q. I've seen you express that</p> <p>8 view, that's why I want to understand the</p> <p>9 basis of it. The fact is at this time Animal</p> <p>10 Care Certified eggs could have come from a</p> <p>11 hen that was force molted through starvation.</p> <p>12 Correct?</p> <p>13 A. At that time they could have</p> <p>14 come from hens that had a force molting</p> <p>15 guideline that did permit you to withdrawal</p> <p>16 feed from the hens for so many days.</p> <p>17 Q. Well, in fact, you could</p> <p>18 withdrawal feed from the hen for two weeks?</p> <p>19 A. Yes.</p> <p>20 Q. And in addition, that hen that</p> <p>21 produced the Animal Care Certified egg at</p> <p>22 this time could have been caged so tightly</p> <p>23 that they could not stretch their wings.</p> <p>24 Correct?</p> <p>25 A. That's what it says, yes.</p>	<p style="text-align: right;">510</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And they weren't getting that</p> <p>3 at this time. Correct?</p> <p>4 A. At this time, no, they were</p> <p>5 not.</p> <p>6 Q. To do things like wing</p> <p>7 flapping, they needed more than 67. Right?</p> <p>8 In fact, they needed even more than 74?</p> <p>9 A. I believe that would be true.</p> <p>10 If that was a behavior that they wanted to</p> <p>11 do, I think they would have difficulty.</p> <p>12 Q. So this question by Compassion</p> <p>13 Over Killing is -- it's really on point,</p> <p>14 isn't it?</p> <p>15 MS. LEVINE: Object to the form</p> <p>16 to the question. Mischaracterizes the</p> <p>17 testimony.</p> <p>18 THE WITNESS: Well, let me</p> <p>19 address that. Our Animal Care</p> <p>20 Certified logo didn't imply that</p> <p>21 the -- what Compassion Over Killing is</p> <p>22 really trying to say is that --</p> <p>23 they're trying to say that our logo</p> <p>24 makes the impression that hens are</p> <p>25 having -- running around outside,</p>
<p style="text-align: right;">509</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And it's true at this time?</p> <p>3 A. Well, within the cage the birds</p> <p>4 learn to accommodate one another to a point</p> <p>5 that they became mates and they accommodate</p> <p>6 one another to do those kind of things. Now,</p> <p>7 in that cage they could not all at the same</p> <p>8 time stretch their wings.</p> <p>9 Q. Didn't the Scientific Advisory</p> <p>10 Committee say based on the science, that even</p> <p>11 the white Leghorn hens required an average of</p> <p>12 74 inches to perform even the most basic</p> <p>13 behaviors like standing comfortably and</p> <p>14 resting?</p> <p>15 A. Again, that 74 was an average</p> <p>16 figure and the real guideline said 67 to</p> <p>17 86 inches, and that was depending on what</p> <p>18 kind of cage it was and whether it was a</p> <p>19 white Leghorn or a brown.</p> <p>20 Q. Even the smallest hen in the</p> <p>21 certain type of shallow cage that not many</p> <p>22 producers used needed at a minimum 67 inches</p> <p>23 even to perform the most basic functions.</p> <p>24 Right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">511</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 having plenty of room, whether they're</p> <p>3 cage free or that kind of thing. That</p> <p>4 logo did not say that whatsoever. Our</p> <p>5 guidelines were clearly, and the logo</p> <p>6 did not make any -- should not have</p> <p>7 made anyone believe that chickens were</p> <p>8 running around free or they were cage</p> <p>9 free, because the guidelines were</p> <p>10 about cage production.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. But there's nothing in here</p> <p>13 about running around. What's referenced</p> <p>14 about hens in here is being able to stretch</p> <p>15 their wings.</p> <p>16 A. That particular question is not</p> <p>17 necessarily what their claim ultimately said</p> <p>18 that our logo implied or could lead consumers</p> <p>19 to be misled with this.</p> <p>20 Q. And then in page 7, the</p> <p>21 paragraph that follows the poll question says</p> <p>22 that "That...question misleads poll</p> <p>23 respondents in two...respects. First, it</p> <p>24 misrepresents the requirements of</p> <p>25 the...program."</p>

48 (Pages 508 to 511)

<p style="text-align: right;">512</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And it says because COK</p> <p>5 suggests that the guidelines encourage</p> <p>6 molting through starvation for periods of</p> <p>7 time exceeding a week. In fact, the opposite</p> <p>8 is true. ACC Guidelines discourage feed</p> <p>9 withdrawal altogether, and in instances where</p> <p>10 necessary, limit its duration to four or</p> <p>11 five days. Do you see that?</p> <p>12 A. Yes, I do see that.</p> <p>13 Q. And that's not accurate.</p> <p>14 Correct?</p> <p>15 A. I would have to read the</p> <p>16 guidelines from that period of time in 2004</p> <p>17 to know exactly what the guidelines said.</p> <p>18 Q. But the guidelines never</p> <p>19 limited the duration of force molting to four</p> <p>20 or five days, did they?</p> <p>21 A. Again, I would have to read the</p> <p>22 guidelines for that period of time to be</p> <p>23 sure.</p> <p>24 Q. You can put that aside.</p> <p>25 - - -</p>	<p style="text-align: right;">514</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 accounts that he would take care of. At the</p> <p>3 time Phyllis Blizzard had certain accounts,</p> <p>4 Billy Joe Correll had certain accounts and et</p> <p>5 cetera. And so we're trying to notify these</p> <p>6 people that Randy Green has -- Randy Nelson</p> <p>7 has worked with, that someone else now will</p> <p>8 be their contact person.</p> <p>9 Q. So these people who were sent</p> <p>10 these letters would have been people that</p> <p>11 were Randy Nelson's accounts while he was an</p> <p>12 egg trader at UEP?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question.</p> <p>15 THE WITNESS: Yes.</p> <p>16 MS. LEVINE: That</p> <p>17 mischaracterizes.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. That's your understanding?</p> <p>20 A. At this point in time, it's my</p> <p>21 understanding that these are people that</p> <p>22 Randy Nelson was providing a service to.</p> <p>23 Q. All right. As part of his</p> <p>24 functions at UEP?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">513</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Gregory-54, 1/6/04</p> <p>3 Packet of Letters, Bates UE0661098 -</p> <p>4 UE0661130, was marked for</p> <p>5 identification.)</p> <p>6 - - -</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Let me hand you what's been</p> <p>9 marked as Gregory-54. This is a packet of</p> <p>10 letters dated January 6, 2004, that's Bates</p> <p>11 stamped UE0661098 through 1130.</p> <p>12 A. Yes.</p> <p>13 Q. They're letters of which -- I</p> <p>14 believe they're identical, they're just</p> <p>15 addressed to different people. Can you</p> <p>16 identify these letters as ones that you</p> <p>17 drafted to be sent on January 6, 2004, to a</p> <p>18 variety of different companies?</p> <p>19 A. Yes.</p> <p>20 Q. What were the circumstances</p> <p>21 that led to the drafting of this letter?</p> <p>22 A. We had an egg trader at that</p> <p>23 time by the name of Randy Nelson, and he</p> <p>24 was -- chose to leave us to do his own</p> <p>25 independent business. He had been assigned</p>	<p style="text-align: right;">515</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. The egg trading functions?</p> <p>3 A. Yes.</p> <p>4 Q. And the people who are sent</p> <p>5 these letters by you are not exclusively UEP</p> <p>6 members. Correct?</p> <p>7 A. Our egg trading service did not</p> <p>8 limit it to trading eggs with just UEP</p> <p>9 members. Many -- some of these people here</p> <p>10 are not egg producers, they are people we are</p> <p>11 selling eggs to. Some of these people are</p> <p>12 egg producers who we are helping them market</p> <p>13 their eggs, et cetera.</p> <p>14 Q. And some are, for example, UEA</p> <p>15 members?</p> <p>16 A. I'd have to scan through it.</p> <p>17 Q. For example, like Primera</p> <p>18 Foods. Are you familiar with Primera Foods?</p> <p>19 A. Yes. I think they probably</p> <p>20 were. They have at one time or another I</p> <p>21 know been UEA members.</p> <p>22 Q. You can put that aside.</p> <p>23 Do you recall hiring an</p> <p>24 organization called GolinHarris?</p> <p>25 A. Yes.</p>

49 (Pages 512 to 515)

<p style="text-align: right;">516</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What were the circumstances</p> <p>3 that led to hiring GolinHarris?</p> <p>4 A. We needed a public relations</p> <p>5 firm to work with us on all kinds of animal</p> <p>6 welfare issues. We were being attacked from</p> <p>7 all different ways. We needed a way to have</p> <p>8 somebody that in the public relations</p> <p>9 business knew how to respond to those kind of</p> <p>10 things. And as well as we had Sawyer Miller,</p> <p>11 was the first company that we contracted with</p> <p>12 for public relations. After a period of time</p> <p>13 we didn't feel like we were getting the</p> <p>14 service from them that we expected, and so we</p> <p>15 interviewed other companies at that time and</p> <p>16 selected GolinHarris to do so. So they were</p> <p>17 responding to all kinds of animal activist</p> <p>18 challenges as well as once we got into the</p> <p>19 UEP certified program, they were our vehicle</p> <p>20 by which we were developing fliers, letters,</p> <p>21 ads, et cetera, for grocery trade magazines</p> <p>22 and those kind of things.</p> <p>23 Q. Do you recall when you retained</p> <p>24 Sawyer Harris?</p> <p>25 A. You mean GolinHarris?</p>	<p style="text-align: right;">518</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 first retained?</p> <p>3 A. I'm sorry, I don't know the</p> <p>4 date that we did that kind of thing, but I</p> <p>5 think that this is somewhere within that time</p> <p>6 frame, yes.</p> <p>7 Q. Attached to your letter is a</p> <p>8 copy of the public relations plan developed</p> <p>9 by GolinHarris. Correct?</p> <p>10 A. Yes, it appears that is the</p> <p>11 fact.</p> <p>12 Q. That's how you describe it, as</p> <p>13 a -- in your cover letter?</p> <p>14 A. Yes.</p> <p>15 Q. If you look at page 5, "KEY</p> <p>16 MESSAGES."</p> <p>17 A. And what would be the number of</p> <p>18 that page?</p> <p>19 Q. 2052.</p> <p>20 A. Okay. Yes.</p> <p>21 Q. That was six key messages that</p> <p>22 GolinHarris was hired to disseminate as part</p> <p>23 of this public relations campaign. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then on page 7, it's two</p>
<p style="text-align: right;">517</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. No. Sorry, Sawyer --</p> <p>3 A. Sawyer Miller I think is the</p> <p>4 name of it.</p> <p>5 Q. -- Miller.</p> <p>6 A. I do not remember the date.</p> <p>7 - - -</p> <p>8 (Exhibit Gregory-55, 2/10/04</p> <p>9 Letter with attachments, Bates</p> <p>10 NL002043 - NL002064, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Let me just hand you what's</p> <p>15 been marked Gregory-55. You might want to</p> <p>16 start on page 2 which is a letter under your</p> <p>17 signature. This is a document Bates stamped</p> <p>18 NL002043 through 2064. If you can scan that</p> <p>19 letter and let me know when you're done.</p> <p>20 A. (Reviewing document.)</p> <p>21 Q. Can you identify the letter as</p> <p>22 one that you sent on February 10, 2004,</p> <p>23 regarding GolinHarris?</p> <p>24 A. Yes.</p> <p>25 Q. Is this when GolinHarris was</p>	<p style="text-align: right;">519</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 pages later, there's a reference to a</p> <p>3 "GOLIN/HARRIS P.R. TRUTH SQUAD." Are you</p> <p>4 familiar with that truth squad?</p> <p>5 A. I'm trying to remind myself of</p> <p>6 it now. I've read it, scanned it quickly.</p> <p>7 Q. That's something that</p> <p>8 GolinHarris was retained to implement as</p> <p>9 well. Correct?</p> <p>10 A. This is part of their plan that</p> <p>11 they presented for, it looks like for 2004.</p> <p>12 Q. Now, you can put that aside.</p> <p>13 Mr. Gregory, you -- are you familiar with an</p> <p>14 organization called the California Egg</p> <p>15 Commission?</p> <p>16 A. Yeah, I'm not -- I don't think</p> <p>17 they're in business any longer, but yeah,</p> <p>18 there used to be.</p> <p>19 Q. What was that organization?</p> <p>20 A. Let's see, I'm trying to</p> <p>21 remember.</p> <p>22 Q. If you recall.</p> <p>23 A. You know, I hate to state it</p> <p>24 wrong, so I don't recall all of what they</p> <p>25 did. Seems to me like they actually had a</p>

50 (Pages 516 to 519)

<p style="text-align: right;">520</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 check off or something where they collected</p> <p>3 money and they did advertising in the State</p> <p>4 of California.</p> <p>5 Q. Are you familiar with someone</p> <p>6 named Robert Pierre?</p> <p>7 A. He was the manager of it, yes.</p> <p>8 Q. Did you have a working</p> <p>9 relationship with him?</p> <p>10 A. I knew him well. I wouldn't</p> <p>11 call that a working relationship, but, yeah,</p> <p>12 I knew him well.</p> <p>13 Q. You were friends?</p> <p>14 A. Yeah.</p> <p>15 Q. Are you still in touch with</p> <p>16 Mr. Pierre?</p> <p>17 A. He has been retired for some</p> <p>18 years and I haven't heard from him since</p> <p>19 then.</p> <p>20 Q. Since he retired?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know when he retired?</p> <p>23 A. No, I do not.</p> <p>24 Q. From time to time you would be</p> <p>25 asked by the media to comment on developments</p>	<p style="text-align: right;">522</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I've read it.</p> <p>3 Q. Can you review it as an e-mail</p> <p>4 exchange you had with Robert Pierre on</p> <p>5 February 10, 2004?</p> <p>6 A. Yes.</p> <p>7 Q. That's after he had retired.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Does it refresh your</p> <p>11 recollection that you had some exchange with</p> <p>12 him after his retirement?</p> <p>13 A. It does not, but I won't argue</p> <p>14 with what's here in front of me now.</p> <p>15 Q. What this indicates is that</p> <p>16 Mr. Pierre contacted you to ask you some</p> <p>17 questions about what was happening in the egg</p> <p>18 industry. Right?</p> <p>19 A. Yes.</p> <p>20 Q. The reason he was asking the</p> <p>21 questions he said is because he was dabbling</p> <p>22 in stocks. Right?</p> <p>23 A. Yes.</p> <p>24 Q. And he refers to the Cal-Maine</p> <p>25 stock having gone from a low of \$3.20 up to</p>
<p style="text-align: right;">521</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 in the egg industry. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And there were times when the</p> <p>5 egg prices were increasing that you were</p> <p>6 asked to comment on the reasons for that.</p> <p>7 Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And did you have a practice in</p> <p>10 place about how you handled those responses?</p> <p>11 A. No.</p> <p>12 - - -</p> <p>13 (Exhibit Gregory-56, E-mail</p> <p>14 chain, Bates UE0810722 & UE0810723,</p> <p>15 was marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Let me hand what you we've</p> <p>19 marked Gregory-56 and ask you to review the</p> <p>20 document.</p> <p>21 A. Do you want me to start from</p> <p>22 the back and read forward?</p> <p>23 Q. Usually the best way. This is</p> <p>24 Bates stamped UE0810722 through 723.</p> <p>25 A. (Reviewing document.)</p>	<p style="text-align: right;">523</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 \$44.89 over the past year, and then it had</p> <p>3 recently dropped to \$35.20. Right?</p> <p>4 A. That's what he says.</p> <p>5 Q. So he's asking -- well, and</p> <p>6 then he says that in the media, the change in</p> <p>7 the stock had been attributed to Dr. Atkins</p> <p>8 and the Atkins Diet. Right?</p> <p>9 A. That's what he says.</p> <p>10 Q. He says but he doesn't think</p> <p>11 that that had anything to do with the price</p> <p>12 of eggs, didn't stock go up because of</p> <p>13 shortage of eggs that affected the price of</p> <p>14 eggs. Right?</p> <p>15 A. That's what he says.</p> <p>16 Q. You respond and you say some</p> <p>17 pleasantries at the beginning, you provide</p> <p>18 some information about what was going on in</p> <p>19 the egg industry, you conclude the second</p> <p>20 full paragraph by saying, "Egg producers have</p> <p>21 made far more money since September 2002 than</p> <p>22 they ever dreamed was possible."</p> <p>23 Do you see that?</p> <p>24 A. I did read that, yes.</p> <p>25 Q. That was your view at the time.</p>

51 (Pages 520 to 523)

<p style="text-align: right;">524</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Right?</p> <p>3 A. Yes.</p> <p>4 Q. And then you talk about the</p> <p>5 subject of the Cal-Maine stock. Now, did you</p> <p>6 have any qualms about doing that?</p> <p>7 A. I didn't know that I shouldn't</p> <p>8 be, so -- I don't own Cal-Maine stock, I</p> <p>9 don't follow their stock quote, so I don't</p> <p>10 know anything about their stock values.</p> <p>11 Q. What you tell Mr. Pierre is</p> <p>12 that in your statements to the media type,</p> <p>13 you have tried to downplay exports in the</p> <p>14 Animal Welfare Program as the reasons for</p> <p>15 improved prices. Right?</p> <p>16 A. Yes.</p> <p>17 Q. Instead you've gladly used the</p> <p>18 Atkins Diet and increase demand as the reason</p> <p>19 for improved prices. Right?</p> <p>20 A. Yes.</p> <p>21 Q. You actually said we have done</p> <p>22 that, when you say "we," you are referring to</p> <p>23 you and others at UEP?</p> <p>24 A. No, I'm referring to me.</p> <p>25 Q. You say, "In reality, the</p>	<p style="text-align: right;">526</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Correct?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Let me hand you what's marked</p> <p>5 as Gregory-57. Why don't you briefly review</p> <p>6 this, please, let me know when you're done.</p> <p>7 A. (Reviewing document.)</p> <p>8 Q. Identify this for the record,</p> <p>9 it's MF10005457 through 59. Mr. Gregory, can</p> <p>10 you identify this --</p> <p>11 A. Yes.</p> <p>12 Q. -- as a summary of the meeting</p> <p>13 that you wrote? Correct?</p> <p>14 A. Yes.</p> <p>15 Q. You discuss the presentations</p> <p>16 by the various groups including the NAD.</p> <p>17 Correct?</p> <p>18 A. Yes.</p> <p>19 Q. The NAD presentation was by an</p> <p>20 attorney named David Mallen. Do you see</p> <p>21 that? Now, is he --</p> <p>22 A. Yes, I see it.</p> <p>23 Q. Is he that person that you --</p> <p>24 A. Yes.</p> <p>25 Q. -- referenced earlier that you</p>
<p style="text-align: right;">525</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Exotic Newcastle, and Animal Welfare</p> <p>3 Guidelines have been the major reasons why</p> <p>4 Cal-Maine and all other egg producers are</p> <p>5 enjoying good times." Right?</p> <p>6 A. Yes.</p> <p>7 Q. That was your view at the time.</p> <p>8 Correct?</p> <p>9 A. Yes. I'm taking -- trying to</p> <p>10 be -- I try to take credit.</p> <p>11 Q. You can put that aside.</p> <p>12 - - -</p> <p>13 (Exhibit Gregory-57, Summary Of</p> <p>14 Meeting With National Advertising</p> <p>15 Review Board April 1, 2004, was marked</p> <p>16 for identification.)</p> <p>17 - - -</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Now, as part of the proceedings</p> <p>20 with the National Advertising Review Board,</p> <p>21 and you alluded to this earlier today, there</p> <p>22 was an opportunity to have an in-person</p> <p>23 presentation with that board. Correct?</p> <p>24 A. With a review board, yes.</p> <p>25 Q. And you participated in that.</p>	<p style="text-align: right;">527</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 believe was somehow beholden to the animal</p> <p>3 rights movement?</p> <p>4 MS. LEVINE: Mr. Gregory, I just</p> <p>5 want to tell you, let Mr. Olson finish</p> <p>6 his question so the court reporter can</p> <p>7 type and then you can answer.</p> <p>8 THE WITNESS: Yes, I believe so.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. What's the basis for that</p> <p>11 opinion?</p> <p>12 A. Based upon having seen his</p> <p>13 passion and his remarks that he made in</p> <p>14 presenting his case as -- at the National</p> <p>15 Advertising -- not the Review Board, but the</p> <p>16 Better Business Bureau.</p> <p>17 Q. Anything else?</p> <p>18 A. I think some of the things,</p> <p>19 what he was doing was not necessarily talking</p> <p>20 about the logo, but he was -- spent a great</p> <p>21 deal of time just going through his really</p> <p>22 reason why we shouldn't use animals in</p> <p>23 agriculture. We were misusing animals and</p> <p>24 all that kind of stuff.</p> <p>25 Q. So the basis for your</p>

52 (Pages 524 to 527)

<p style="text-align: right;">528</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 assertions about Mr. Mallen are based on what</p> <p>3 he said at the National Advertising Division</p> <p>4 presentation. Is that right?</p> <p>5 A. Yes, yes, yes.</p> <p>6 Q. You didn't uncover any</p> <p>7 information linking Mr. Mallen to any animal</p> <p>8 rights group?</p> <p>9 A. No, I did not.</p> <p>10 Q. You're not suggesting that he's</p> <p>11 corrupt in any way?</p> <p>12 A. No, no, no, not at all.</p> <p>13 Q. You're not suggesting that he</p> <p>14 is not professional in his job?</p> <p>15 A. No, not at all.</p> <p>16 Q. You believe, though, that his</p> <p>17 passion in some of the things that he said</p> <p>18 indicated that he is on the side of the</p> <p>19 activist movement?</p> <p>20 A. Yes.</p> <p>21 Q. In this document, you don't</p> <p>22 record Mr. Mallen saying anything about no</p> <p>23 hen should ever be used in -- animal should</p> <p>24 ever be used in agriculture, do you?</p> <p>25 A. No. Of course in this I'm just</p>	<p style="text-align: right;">530</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And in your conclusion, you say</p> <p>3 that "Upon leaving we felt we had been</p> <p>4 provided with a fair hearing..." Right?</p> <p>5 A. Yes.</p> <p>6 Q. And that UEP had been given</p> <p>7 sufficient time to present its case.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. You can put that aside.</p> <p>11 Do you recall the results of</p> <p>12 the National Advertising Review Board's</p> <p>13 decision?</p> <p>14 A. I recall receiving it and I</p> <p>15 recall having read it at that time.</p> <p>16 Q. Did the National Advertising</p> <p>17 Review Board rule in favor of the UEP?</p> <p>18 A. Well, I think we'd have to</p> <p>19 review it again now. My conclusion of it</p> <p>20 was, as I remember, is that they did not</p> <p>21 necessarily rule against us. They ruled</p> <p>22 that, you know, without some sort of a</p> <p>23 consumer education program, a consumer could</p> <p>24 be misled by this logo and they, as I recall,</p> <p>25 didn't say that that alone as one consumer</p>
<p style="text-align: right;">529</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 trying to summarize things. I couldn't write</p> <p>3 word for word what everybody said.</p> <p>4 Q. Right. But you cover his</p> <p>5 presentation.</p> <p>6 A. Right.</p> <p>7 Q. You make a summary of it and</p> <p>8 you don't allude to him saying anything about</p> <p>9 no animal should be used in agriculture, do</p> <p>10 you?</p> <p>11 A. No, I do not.</p> <p>12 Q. And you gave some --</p> <p>13 A. Do you know Mr. Mallen?</p> <p>14 Q. Well, I've looked at Mr.</p> <p>15 Mallen's biography and he certainly looks</p> <p>16 like a professional to me. So I wanted to</p> <p>17 know if you knew anything I didn't.</p> <p>18 Now, if you look at the</p> <p>19 presentation by UEP, you gave part of that</p> <p>20 presentation. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you also discuss the</p> <p>23 presentation by Compassion Over Killing.</p> <p>24 Correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">531</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 was misled was not a reason to disallow this,</p> <p>3 but they gave us some recommendations of how</p> <p>4 we could do things to educate the consumers.</p> <p>5 And as I said to you earlier, I think their</p> <p>6 recommendations were great, we acknowledged</p> <p>7 that we thought so and we went about trying</p> <p>8 to make those changes that they recommended.</p> <p>9 - - -</p> <p>10 (Exhibit Gregory-58, 4/27/04</p> <p>11 Letter, Bates UE0218877 - UE0218881,</p> <p>12 was marked for identification.)</p> <p>13 - - -</p> <p>14 BY MR. OLSON:</p> <p>15 Q. I've handed you what's been</p> <p>16 marked Gregory-58. It's Bates stamped</p> <p>17 UE0218877 through 881. And can you identify</p> <p>18 this document as a cover letter from the NARB</p> <p>19 dated April 27, 2004, to Kevin Haley that</p> <p>20 attaches the NAB's decision?</p> <p>21 A. Yes.</p> <p>22 Q. And you reviewed this before?</p> <p>23 A. I'm sure I did.</p> <p>24 Q. Now, if you look at the</p> <p>25 decision, there's a section that is a</p>

53 (Pages 528 to 531)

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<p style="text-align: right;">532</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 background section.</p> <p>3 A. But I think that we -- what</p> <p>4 he's asking for is a statement in writing</p> <p>5 within five days. I think we did do that.</p> <p>6 Q. Right.</p> <p>7 A. What are you asking now?</p> <p>8 Q. Why don't you review the</p> <p>9 background section which is on the first page</p> <p>10 of the NARB decision.</p> <p>11 A. Background. (Reviewing</p> <p>12 document.)</p> <p>13 I've read that section.</p> <p>14 Q. That background section lays</p> <p>15 out what had happened and it also summarizes</p> <p>16 the arguments of COK, UEP and what NAD had</p> <p>17 found. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Is that summary generally</p> <p>20 consistent with your recollection?</p> <p>21 A. Yes.</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question.</p> <p>24 THE WITNESS: Yes.</p> <p>25 MS. LEVINE: Calls for</p>	<p style="text-align: right;">534</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 conclusion is that hens need more than</p> <p>3 74 inches to flap their wings. Right?</p> <p>4 MS. LEVINE: Object.</p> <p>5 Misleading -- sorry, mischaracterizing</p> <p>6 the testimony, but you can answer.</p> <p>7 THE WITNESS: I go back to say</p> <p>8 that that was an average at the time</p> <p>9 and the Scientific Committee</p> <p>10 recommendations did not ultimately</p> <p>11 require or speak to 74 inches.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. The next paragraph in the</p> <p>14 middle, there's a parenthetical, it says,</p> <p>15 "even the 67 square inch standard to become</p> <p>16 effective in 2008 is less than a typical 8 ½</p> <p>17 X 11 inch piece of paper."</p> <p>18 Do you see that?</p> <p>19 A. That's in which paragraph?</p> <p>20 Q. The next one.</p> <p>21 A. Read the first few sentences so</p> <p>22 I make sure I'm in the same place with you.</p> <p>23 Q. Well, there's just a</p> <p>24 parenthetical in the middle that says,</p> <p>25 "...the 67 square inch standard is less than</p>
<p style="text-align: right;">533</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 speculation.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. On page 2 of the report, the</p> <p>5 third full paragraph, it says, "The UEP</p> <p>6 guidelines recommend increased space for hens</p> <p>7 in cages, in the range of 67-86 square</p> <p>8 inches, although producers need not reach the</p> <p>9 67 inch minimum until 2008."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. That was a true statement?</p> <p>13 It's accurate?</p> <p>14 A. Yes.</p> <p>15 Q. And then it continues to say,</p> <p>16 "(67 square inches, while an improvement, is</p> <p>17 not enough space for a hen to flap its</p> <p>18 wings.)" True as well. Right?</p> <p>19 A. That's what it says.</p> <p>20 Q. It's accurate?</p> <p>21 A. I think they have made an</p> <p>22 assumption that is not -- it's an assumption</p> <p>23 based on the argument. It is not science.</p> <p>24 It's not a science-based argument.</p> <p>25 Q. Because the science-based</p>	<p style="text-align: right;">535</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 a typical 8 ½ X 11 inch piece of paper."</p> <p>3 Do you see that?</p> <p>4 A. That is -- that is the position</p> <p>5 that the Compassion Over Killing provided.</p> <p>6 Q. Is that accurate, to your</p> <p>7 knowledge?</p> <p>8 A. That varies depending on the</p> <p>9 size of the cage, but in some cases that</p> <p>10 could be accurate.</p> <p>11 Q. Now, on the next page, you'll</p> <p>12 see there's a sentence that says, we reach</p> <p>13 this conclusion for a number of reasons.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And that's referring to the</p> <p>18 conclusion that's expressed in the prior</p> <p>19 sentence. Right?</p> <p>20 A. You mean the sentence prior to</p> <p>21 that where it says --</p> <p>22 Q. Yes.</p> <p>23 A. However, the --</p> <p>24 Q. Please don't read out loud.</p> <p>25 Don't read out loud, again, for her benefit.</p>

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<p style="text-align: right;">536</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'll read it.</p> <p>3 A. Okay.</p> <p>4 Q. What the NARB wrote is here,</p> <p>5 the COK evidence is corroborative of the NAD</p> <p>6 sound judgment that many consumers will take</p> <p>7 away from the Animal Care Certified logo a</p> <p>8 message that the level of care is more humane</p> <p>9 than allowed by the UEP guidelines. That was</p> <p>10 the conclusion of the NARB. Correct?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question. I think this -- I</p> <p>13 don't think this witness recalls</p> <p>14 the -- he's reading from a document</p> <p>15 which he certainly can do.</p> <p>16 THE WITNESS: Maybe I'm</p> <p>17 misreading it, but I don't read that</p> <p>18 that the Review Board has reached that</p> <p>19 judgment. I'm reading it that says</p> <p>20 the COK evidence is -- the National</p> <p>21 Advertising Division --</p> <p>22 BY MR. OLSON:</p> <p>23 Q. It says it corroborates the</p> <p>24 judgment that it characterizes as sound by</p> <p>25 the NAD that consumers would think from</p>	<p style="text-align: right;">538</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can do that at a later</p> <p>3 time. My time is limited.</p> <p>4 A. Well, the reason why I'm saying</p> <p>5 that is that you have presented me with a</p> <p>6 document from the Review Board, but you have</p> <p>7 not written or highlighted what their final</p> <p>8 answers were. You've left it as if the</p> <p>9 National Advertising Division and COK have</p> <p>10 reached a sound judgment, but you have not</p> <p>11 said what the Review Board said.</p> <p>12 Q. So the final recommendation was</p> <p>13 that the certification program should either</p> <p>14 be discontinued in its present form or it</p> <p>15 needed to be modified to more clearly</p> <p>16 communicate that certification signifies the</p> <p>17 specific standard of care set forth in the</p> <p>18 UEP guidelines. Right?</p> <p>19 A. Through the certification</p> <p>20 materials, communication requirements placed</p> <p>21 on certified producers by UEP, that</p> <p>22 certification signifies specific standards.</p> <p>23 So -- and what they have given us is</p> <p>24 recommendations, I think, prior to that is</p> <p>25 talking about Web sites and a more clear logo</p>
<p style="text-align: right;">537</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 calling this an Animal Care Certified logo,</p> <p>3 that the level of care is more humane than</p> <p>4 actually is allowed by the guidelines.</p> <p>5 That's what the Review Board --</p> <p>6 A. What I'm reading that to say is</p> <p>7 that COK and NAD have an agreement that</p> <p>8 this -- this statement. I'm not reading that</p> <p>9 that the Review Board said that.</p> <p>10 Q. Even when it says that it was a</p> <p>11 sound judgment?</p> <p>12 A. Again, I'm saying I read that</p> <p>13 to be that that's a sound judgment of COK and</p> <p>14 NAD.</p> <p>15 Q. What does the word "sound" mean</p> <p>16 to you?</p> <p>17 A. I don't know.</p> <p>18 Q. In fact, you went back to the</p> <p>19 UEP members and told them --</p> <p>20 A. Whoa, whoa, wait a second.</p> <p>21 Q. You told them that UEP had won</p> <p>22 the appeal.</p> <p>23 A. Don't you think we should go on</p> <p>24 and read what their conclusion was and what</p> <p>25 their recommendations they made for us?</p>	<p style="text-align: right;">539</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and all this. My point of saying this is</p> <p>3 that the Review Board did not come down hard</p> <p>4 on us. That's why I say they were fair</p> <p>5 people in that they laid -- the cases were</p> <p>6 laid out, they put all the points of both</p> <p>7 sides on the board and in the end they gave</p> <p>8 us the recommendation, and we go back home</p> <p>9 and change that logo and do some things in</p> <p>10 order to provide education for consumers.</p> <p>11 And we agreed with that ruling and wrote back</p> <p>12 to the Review Board saying we accepted that,</p> <p>13 and we were going to implement those</p> <p>14 recommendations.</p> <p>15 Q. Right. And they weren't</p> <p>16 satisfied because at that point you were</p> <p>17 still wanting to call it an Animal Care</p> <p>18 Program, and that is what they believed was</p> <p>19 deceptive?</p> <p>20 A. No, no, no. Not at the</p> <p>21 conclusion of this meeting, we did not --</p> <p>22 that was not our intention. Our intention</p> <p>23 was going to the Federal Trade Commission and</p> <p>24 see if we couldn't resolve it, because there</p> <p>25 wasn't any reason for us to make the changes</p>

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<p style="text-align: right;">540</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 if we hadn't also resolved the situation with</p> <p>3 the Federal Trade Commission because Mr.</p> <p>4 Mallen had sent a letter to the Federal Trade</p> <p>5 Commission even before we could respond to</p> <p>6 the Review Board within that five days.</p> <p>7 Q. So your testimony -- what is</p> <p>8 the basis for saying Mr. Mallen contacted the</p> <p>9 Federal Trade Commission before you had a</p> <p>10 chance to respond?</p> <p>11 A. We know -- I don't have it</p> <p>12 here, maybe you do, but we know that Mr.</p> <p>13 Mallen had sent a letter to the Federal Trade</p> <p>14 Commission like the day of or the day before</p> <p>15 that our response back to the Review Board</p> <p>16 even arrived. So he had already drawn his</p> <p>17 conclusion even before we had a chance to</p> <p>18 come back and say thank you for your advice</p> <p>19 and thank you for helping us and we will do</p> <p>20 all these things.</p> <p>21 - - -</p> <p>22 (Exhibit Gregory-59, Producer</p> <p>23 Committee For Animal Welfare May 10,</p> <p>24 2004 Washington, D.C. Minutes, Bates</p> <p>25 UE0153279 & UE0153280, was marked for</p>	<p style="text-align: right;">542</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And in that, that reflects that</p> <p>3 Dr. Armstrong addressed the Producer</p> <p>4 Committee at this time. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. He addressed the issue of</p> <p>7 feeder space. Right?</p> <p>8 A. Correct.</p> <p>9 Q. You said the Scientific</p> <p>10 Committee continued to stand behind its</p> <p>11 original recommendation for four inches of</p> <p>12 feeder space per hen. Right?</p> <p>13 A. Yes.</p> <p>14 Q. And the Scientific Committee</p> <p>15 considered feeder space and floor space to be</p> <p>16 of equal importance. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And as of this time there was</p> <p>19 no requirement in the UEP program of four</p> <p>20 inches of feeder space per hen. Correct?</p> <p>21 A. That is correct.</p> <p>22 Q. Put that aside.</p> <p>23 - - -</p> <p>24 (Exhibit Gregory-60, 5/2/04</p> <p>25 United Voices, Bates MPS-00066253 -</p>
<p style="text-align: right;">541</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 identification.)</p> <p>3 - - -</p> <p>4 BY MR. OLSON:</p> <p>5 Q. And I've handed you what's been</p> <p>6 marked Gregory-59. Can you identify it as</p> <p>7 the minutes of a Producer Committee meeting</p> <p>8 taken by you on May 10, 2004?</p> <p>9 A. That's what it states, yes.</p> <p>10 Q. The document is Bates stamped</p> <p>11 UE0153279 through 280.</p> <p>12 A. Yes.</p> <p>13 Q. And in this document,</p> <p>14 approximately two weeks after the decision</p> <p>15 was received, Mr. Isaacson reported to the</p> <p>16 committee that the Review Board had ruled in</p> <p>17 favor of UEP. Correct?</p> <p>18 A. And you're reading from which</p> <p>19 paragraph?</p> <p>20 Q. The middle where it says,</p> <p>21 "National Advertising Review Board."</p> <p>22 A. Yes.</p> <p>23 Q. And on the second page there's</p> <p>24 a discussion about feeder space?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">543</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MPS-00066256, was marked for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Let me hand you what's been</p> <p>7 marked Gregory-60. This is Bates stamped</p> <p>8 MPS-00066253 through 256. I'll ask if you</p> <p>9 can identify it as a United Voices</p> <p>10 publication you edited dated May 20, 2004?</p> <p>11 A. Yes.</p> <p>12 Q. There's an editorial under your</p> <p>13 name that starts on the bottom of page 2, I'd</p> <p>14 ask if you could review that editorial, let</p> <p>15 me know when you're done.</p> <p>16 A. (Reviewing document.)</p> <p>17 I've read it.</p> <p>18 Q. This is an editorial you</p> <p>19 drafted. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. It's titled, "Are You</p> <p>22 Committed." Right?</p> <p>23 A. Yes.</p> <p>24 Q. And what was going on is that</p> <p>25 after prices had been high for some time,</p>

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<p style="text-align: right;">544</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 there was concern that they were -- they had</p> <p>3 gone back down. Right?</p> <p>4 A. It appears to be what it's</p> <p>5 about.</p> <p>6 Q. You were trying to get the UEP</p> <p>7 members to recommit themselves to managing</p> <p>8 the supply issue. Correct?</p> <p>9 MS. LEVINE: Objection to the</p> <p>10 form of the question.</p> <p>11 THE WITNESS: I think that what</p> <p>12 it is that Roger Deffner, who is</p> <p>13 chairman of the board at that time, is</p> <p>14 speaking to, that you need to maintain</p> <p>15 plans to be a profitable industry and</p> <p>16 that you need to -- you need to</p> <p>17 produce eggs to meet the market</p> <p>18 demand, but there's no need to produce</p> <p>19 any more than that.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. And you make the point, as</p> <p>22 we've discussed previously, that the Animal</p> <p>23 Care Certified Program is the only road map</p> <p>24 the industry has ever had for future</p> <p>25 planning. Right?</p>	<p style="text-align: right;">546</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And what --</p> <p>3 A. This is a period of three to</p> <p>4 four years after the Animal Care Certified or</p> <p>5 UEP certified program has been in effect.</p> <p>6 Q. You made the statement a couple</p> <p>7 of times about what happened in 2005, 2006.</p> <p>8 What data are you basing that on?</p> <p>9 A. It's based upon the USDA layer</p> <p>10 flock inventory and on Urner Barry market</p> <p>11 quotes.</p> <p>12 Q. Anything else?</p> <p>13 A. No, that's it.</p> <p>14 Q. So when you say in this</p> <p>15 editorial in May of 2004, "If you stay true</p> <p>16 to the program and manage it to meet the</p> <p>17 market demand, it can provide the industry</p> <p>18 with prolonged profits," what did you mean by</p> <p>19 "manage it to meet the market demand"?</p> <p>20 A. What I'm meaning in all these</p> <p>21 cases is if you manage your business to</p> <p>22 produce the number of eggs that you need to</p> <p>23 fill your customers' orders, you can have</p> <p>24 prolonged profits. If you manage your</p> <p>25 business to produce surplus eggs, it is going</p>
<p style="text-align: right;">545</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Do I say that in here?</p> <p>3 Q. If you look at the bottom of</p> <p>4 the --</p> <p>5 A. Of the editorial.</p> <p>6 Q. -- on the first page.</p> <p>7 A. Okay.</p> <p>8 Q. You say, "While never intended</p> <p>9 as a supply adjustment program, the Animal</p> <p>10 Care Certified program is the only roadmap</p> <p>11 the industry has ever had for future</p> <p>12 planning."</p> <p>13 A. Right. I think I have</p> <p>14 explained that before as to why -- what my</p> <p>15 meaning of road map is.</p> <p>16 Q. And here you say if you stay</p> <p>17 true to the program and manage it to meet the</p> <p>18 current -- to meet the market demand, it can</p> <p>19 provide the industry with prolonged profits.</p> <p>20 Do you see that?</p> <p>21 A. I see that, but it didn't</p> <p>22 happen because in 2005 and 2006, industry</p> <p>23 produced so many eggs that it -- and sold</p> <p>24 them at such low prices, the industry nearly</p> <p>25 went bankrupt.</p>	<p style="text-align: right;">547</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 to depress the market and you're going to be</p> <p>3 losing money.</p> <p>4 Q. And in the next sentence of</p> <p>5 this paragraph we've been looking at, you</p> <p>6 specifically reference this idea of</p> <p>7 backfilling. Right?</p> <p>8 A. Yes.</p> <p>9 Q. You say for many people</p> <p>10 backfilling was maybe necessary to maximize</p> <p>11 profits --</p> <p>12 A. Yes.</p> <p>13 Q. -- but now it's time to rethink</p> <p>14 that. Right?</p> <p>15 A. Yes.</p> <p>16 Q. You say now backfilling doesn't</p> <p>17 make good business sense. Right?</p> <p>18 A. Yes.</p> <p>19 Q. That was your view at the time.</p> <p>20 Correct?</p> <p>21 A. And here is what's going on, is</p> <p>22 that this is before we reach the prohibition</p> <p>23 on backfilling. This was what was going on.</p> <p>24 The industry was making money and they</p> <p>25 thought they could capitalize up on this by</p>

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<p style="text-align: right;">548</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 taking hens and backfilling cages when, in</p> <p>3 fact, what was happening is that they were</p> <p>4 keeping flocks, older flocks that should have</p> <p>5 been disposed of. So what they did by doing</p> <p>6 so, they -- this practice was adding eggs on</p> <p>7 a market that was not intended and was</p> <p>8 destroying their ability to be profitable.</p> <p>9 Q. Towards the end of your</p> <p>10 editorial you say, "We believe that the</p> <p>11 industry only needs to make a few minor</p> <p>12 adjustments but this needs to happen now."</p> <p>13 Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And one of those minor</p> <p>16 adjustments was to stop backfilling. Right?</p> <p>17 A. I don't believe that says that</p> <p>18 there, does it?</p> <p>19 Q. Well, it doesn't say it right</p> <p>20 next to that sentence which is why I asked</p> <p>21 the question.</p> <p>22 A. No, I don't know that when I</p> <p>23 wrote that sentence, whether I had any --</p> <p>24 made any or intended to make any reference</p> <p>25 about backfilling.</p>	<p style="text-align: right;">550</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question. Mischaracterizes</p> <p>4 what the witness said.</p> <p>5 THE WITNESS: I would say at</p> <p>6 that time, that from a business</p> <p>7 standpoint, yes. This was before we</p> <p>8 got to the point of saying this is</p> <p>9 violating the spirit of what the UEP</p> <p>10 certified guidelines intended.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. And then at the end of the</p> <p>13 editorial, you reference a Marketing</p> <p>14 Committee recommendation that's a plan of</p> <p>15 action relating to supply. Right?</p> <p>16 A. Yes.</p> <p>17 Q. And you reference, you say,</p> <p>18 "While this is a voluntary program, are you</p> <p>19 committed?"</p> <p>20 A. Yes.</p> <p>21 Q. "Did you return your intention</p> <p>22 form to UEP?" Right?</p> <p>23 A. Yes.</p> <p>24 Q. And you say, "Those that are</p> <p>25 committed will be acknowledged in a future</p>
<p style="text-align: right;">549</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What are the minor adjustments</p> <p>3 that needed to be made?</p> <p>4 A. This is now nine years later,</p> <p>5 and I don't know what that was.</p> <p>6 Q. Well, you thought backfilling</p> <p>7 was one thing that it made sense to stop from</p> <p>8 a business perspective. Right?</p> <p>9 A. I thought at that time that</p> <p>10 that was -- that was keeping hens in</p> <p>11 production that should on your normal</p> <p>12 schedule have been depopulated. Instead you</p> <p>13 were keeping hens and filling up empty cages</p> <p>14 because the industry was profitable at that</p> <p>15 time and you were thinking that this -- the</p> <p>16 egg farmer is thinking this is a way to</p> <p>17 maximize profits and just produce more eggs</p> <p>18 when, in fact, what it was doing was it was</p> <p>19 creating more eggs than the market needed and</p> <p>20 would eventually depress the price of eggs.</p> <p>21 Q. So the idea was that even</p> <p>22 though backfilling might make sense for an</p> <p>23 individual farmer, for the industry as a</p> <p>24 whole it would be better if folks weren't</p> <p>25 doing it?</p>	<p style="text-align: right;">551</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 newsletter." Right?</p> <p>3 A. Yes, that's what it says.</p> <p>4 Q. That was to encourage people to</p> <p>5 be committed. Right?</p> <p>6 A. That's true.</p> <p>7 Q. Now, do you recall as a result</p> <p>8 of what was going on with prices in the egg</p> <p>9 industry at this time that there was an egg</p> <p>10 economic summit that was held?</p> <p>11 A. You're done with this one here?</p> <p>12 Q. Yes.</p> <p>13 A. Yes, I don't remember what the</p> <p>14 date was, but we did -- I think you're</p> <p>15 referencing -- you need to show me the</p> <p>16 document, I guess, because we did at one</p> <p>17 point in time, I know, hold an egg economic</p> <p>18 summit, but I don't know --</p> <p>19 - - -</p> <p>20 (Exhibit Gregory-61, PowerPoint</p> <p>21 Presentation, Bates UE0146041 -</p> <p>22 UE0146055, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. OLSON:</p>

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<p style="text-align: right;">552</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let me hand you this one.</p> <p>3 We'll try this one first. This is</p> <p>4 Gregory-61. It is Bates stamped UE0146041</p> <p>5 through 055.</p> <p>6 Can you identify this as the</p> <p>7 presentation that you made at the egg</p> <p>8 economic summit in November 16, 2004?</p> <p>9 A. I can identify that that was an</p> <p>10 economic summit. I'm not sure -- in fact, I</p> <p>11 know that I did not present all of these</p> <p>12 slides here.</p> <p>13 Q. How do you know you didn't</p> <p>14 present all the slides?</p> <p>15 A. Because there are some that</p> <p>16 is -- well, I say I didn't. Maybe I did. I</p> <p>17 don't know. But there were several people at</p> <p>18 that summit that were presenting things, and</p> <p>19 so I don't know what I did and what they did</p> <p>20 is what I'm saying.</p> <p>21 Q. But this -- if you look at the</p> <p>22 cover, this indicates that this is your</p> <p>23 presentation. Correct?</p> <p>24 A. Yes, it does.</p> <p>25 Q. And did you make a presentation</p>	<p style="text-align: right;">554</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 what is -- how they do this, they gather a</p> <p>3 lot of statistics that lets them arrive at</p> <p>4 what the inventory is, and then they take</p> <p>5 that from the previous month's inventory,</p> <p>6 then they -- now the new -- and they figure</p> <p>7 out how many hens were slaughtered at</p> <p>8 Canadian plants, how many hens were</p> <p>9 slaughtered at U.S. plants, how many hens</p> <p>10 were, you know, disposed of in other ways,</p> <p>11 and what was natural mortality.</p> <p>12 Q. Now, who was invited to this</p> <p>13 economic summit, do you recall?</p> <p>14 A. Now, I apologize -- I shouldn't</p> <p>15 apologize.</p> <p>16 Again, you're asking me for</p> <p>17 memory in 2004, so I will try my best.</p> <p>18 Q. Do you recall if there were</p> <p>19 restrictions on who could attend?</p> <p>20 A. You know, I think there were,</p> <p>21 but we had invited some people to come and</p> <p>22 make presentations because this was trying to</p> <p>23 look at the whole gamut of the supply. For</p> <p>24 instance, we had someone, as I recall, from</p> <p>25 American Egg Board talking about the consumer</p>
<p style="text-align: right;">553</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 at that summit?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Let me just ask about a couple</p> <p>5 of pages in here. There's a page that ends</p> <p>6 051, it's about in the middle towards the</p> <p>7 end. It's titled, "Supply/Demand Price</p> <p>8 Relationship."</p> <p>9 A. Yes.</p> <p>10 Q. Do you know where the data in</p> <p>11 this slide comes from?</p> <p>12 A. Yes. The people populations</p> <p>13 came from the U.S. census statistics that are</p> <p>14 found on the Web site or someplace. Well,</p> <p>15 wait. We're not talking about people here,</p> <p>16 are we? The hen population comes from the</p> <p>17 USDA monthly hen inventory.</p> <p>18 Q. How about the "Total Removed"</p> <p>19 column?</p> <p>20 A. That, again, is statistics that</p> <p>21 is provided by the USDA.</p> <p>22 Q. What does that refer to, "Total</p> <p>23 Removed"?</p> <p>24 A. What they're reporting is</p> <p>25 that -- is the, what is -- they're reporting</p>	<p style="text-align: right;">555</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 side of the market and what was happening</p> <p>3 there. We had someone from the egg product</p> <p>4 side of the business talking about the growth</p> <p>5 of the egg products business, how they were</p> <p>6 building houses. We had someone that was an</p> <p>7 egg farmer that was rather good at taking in</p> <p>8 statistic stuff and trying to put a good, you</p> <p>9 know, education about what these things were</p> <p>10 to mean and that kind of thing. I think we</p> <p>11 had somebody from a company called Country</p> <p>12 Creek Farms at that time who was the main</p> <p>13 conduit to Walmart. And he was there to</p> <p>14 present what the retailers expected and how</p> <p>15 the retailers responded to these cycles up</p> <p>16 and down, prices and all this and that kind</p> <p>17 of thing. So Walmart is the big dog in this</p> <p>18 business, and we needed to know, you know,</p> <p>19 what the retailer's perspective of all that's</p> <p>20 going on. There may have been other people</p> <p>21 that made presentations, but from my poor</p> <p>22 memory, that's what I'm trying to --</p> <p>23 Q. That's what you recall right</p> <p>24 now?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">556</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. If you look at the last page of</p> <p>3 your presentation, there's a heading titled,</p> <p>4 "Management Recommendations."</p> <p>5 A. Okay.</p> <p>6 Q. That reflects the</p> <p>7 recommendations that UEP management was</p> <p>8 making to UEP members at this summit.</p> <p>9 Correct?</p> <p>10 A. Yes. Yes. I'm gathering</p> <p>11 that's what it is, yes.</p> <p>12 Q. The first one is "Stay</p> <p>13 committed to Animal Care Certified Space</p> <p>14 Phase-In Plan." Right?</p> <p>15 A. Yes.</p> <p>16 Q. Number two is, "Do not backfill</p> <p>17 cages." Right?</p> <p>18 A. Yes.</p> <p>19 Q. Number three is, "Dispose of</p> <p>20 spent hens at younger ages." What does that</p> <p>21 refer to?</p> <p>22 A. Well, a spent hen, that's a</p> <p>23 term that's used in the industry to identify</p> <p>24 a hen that is in the last weeks or days of</p> <p>25 her laying productive cycle. So if you've</p>	<p style="text-align: right;">558</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 but they like shell egg producers also needed</p> <p>3 to look at what their market was and how many</p> <p>4 new housings that they need to build.</p> <p>5 Because every time they built a house with</p> <p>6 egg laying hens in it now for breaking, that</p> <p>7 meant that some shell egg producer out here</p> <p>8 then selling to the breakers had lost his</p> <p>9 market now. So we're trying to say that as I</p> <p>10 said I think in some document this egg market</p> <p>11 is just one pie. We all got to figure out a</p> <p>12 way to fit in.</p> <p>13 Q. So that was -- that topic was</p> <p>14 addressed at the economic summit as well.</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. You can put that aside.</p> <p>18 - - -</p> <p>19 (Exhibit Gregory-62, 11/18/04</p> <p>20 Letter, Bates UE0176038 - UE0176040,</p> <p>21 was marked for identification.)</p> <p>22 - - -</p> <p>23 BY MR. OLSON:</p> <p>24 Q. Let me hand you what's been</p> <p>25 marked Gregory-62. This is Bates stamped</p>
<p style="text-align: right;">557</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 got a date to get rid of them, I'll just use</p> <p>3 numbers now, at 110 weeks or whatever it is,</p> <p>4 we would say you're going to dispose of them</p> <p>5 anyway, get rid of them two weeks earlier,</p> <p>6 whatever it is.</p> <p>7 Q. Then another recommendation is,</p> <p>8 "Do not expand beyond market needs." Right?</p> <p>9 A. Yes, it's always been my belief</p> <p>10 that it's a foolish business decision to</p> <p>11 produce any product more than you have an</p> <p>12 available market for.</p> <p>13 Q. That's similar to the last --</p> <p>14 oh, and then the last point is slightly</p> <p>15 different. It's "Egg Breaking companies</p> <p>16 should only expand their egg production</p> <p>17 capacity to meet the growth of the eggs</p> <p>18 products market." Right?</p> <p>19 A. The eggs products market is a</p> <p>20 nice business and is growing and -- but in</p> <p>21 order -- there had been a change in the</p> <p>22 industry and instead of them now buying shell</p> <p>23 eggs from shell egg producers and breaking</p> <p>24 those eggs, many of these guys were building</p> <p>25 their own facility. That was perfectly fine,</p>	<p style="text-align: right;">559</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 UE0176038 through 040.</p> <p>3 I'll ask you if you can</p> <p>4 identify it as a letter sent by you and Roger</p> <p>5 Deffner to UEP members on November 18, 2004?</p> <p>6 A. Yes. Let's see if my memory</p> <p>7 was very good.</p> <p>8 Q. It refers to some of the</p> <p>9 discussions at the summit. Correct?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Now, at the bottom of the first</p> <p>12 page, it refers to Marty Eisenstein from the</p> <p>13 firm of Brann & Isaacson --</p> <p>14 A. Yes.</p> <p>15 Q. -- making some presentation on</p> <p>16 Capper-Volstead issues. Right?</p> <p>17 A. It does.</p> <p>18 Q. And that's the document that we</p> <p>19 looked at before, Exhibit 51. Correct?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Which you'll see is dated</p> <p>24 November 16, 2004, the date of the meeting.</p> <p>25 A. The meeting, okay.</p>

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<p style="text-align: right;">560</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Mr. Gregory, pull</p> <p>3 up the document.</p> <p>4 THE WITNESS: What number is</p> <p>5 that again?</p> <p>6 BY MR. OLSON:</p> <p>7 Q. 51.</p> <p>8 A. Show me what it looks like.</p> <p>9 Yes, I have it.</p> <p>10 Q. So that document is dated</p> <p>11 November 16, 2004, the day of the summit.</p> <p>12 That's what was presented to UEP members at</p> <p>13 that meeting. Right?</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question. If this witness</p> <p>16 knows.</p> <p>17 THE WITNESS: You know, I don't</p> <p>18 know that because this document says</p> <p>19 "UEP Marketing Committee Antitrust</p> <p>20 Issues." It does -- it's not talking</p> <p>21 about the economic summit.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Do you know what Mr. Eisenstein</p> <p>24 presented?</p> <p>25 A. I would know only that he, as</p>	<p style="text-align: right;">562</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Let me hand you what's been</p> <p>4 marked Gregory-63.</p> <p>5 MS. LEVINE: Steig, when you are</p> <p>6 good for just a five-minute break</p> <p>7 since it's been an hour and a half</p> <p>8 since lunch.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. This is Bates stamped</p> <p>11 UE0210450. Can you identify it as a memo</p> <p>12 sent to you by a --</p> <p>13 A. Duane Mangskau.</p> <p>14 Q. -- Duane Mangskau on</p> <p>15 November 18, 2004?</p> <p>16 A. Yes.</p> <p>17 Q. You received it on</p> <p>18 November 22nd?</p> <p>19 A. Yes.</p> <p>20 Q. Of course November 18th is</p> <p>21 the -- well, this is shortly after the</p> <p>22 summit. Who is Mr. Mangskau?</p> <p>23 A. He was, as I recall, the farm</p> <p>24 manager of this IVA.</p> <p>25 Q. Is that a UEP member?</p>
<p style="text-align: right;">561</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 noted here in this letter, what he must have</p> <p>3 talked about, the protections and limitations</p> <p>4 of Capper-Volstead. Beyond that I don't</p> <p>5 know.</p> <p>6 Q. So you don't know if he handed</p> <p>7 out written materials?</p> <p>8 A. I do not know.</p> <p>9 Q. And you sitting here today</p> <p>10 don't recall what he said. Right?</p> <p>11 A. That's true.</p> <p>12 Q. Now, do you recall that at the</p> <p>13 summit and afterwards this idea of</p> <p>14 backfilling was a topic of discussion?</p> <p>15 A. You will have to refresh my</p> <p>16 memory because I do not know.</p> <p>17 Q. You don't recall that. Okay.</p> <p>18 You can put that aside.</p> <p>19 A. This letter?</p> <p>20 Q. Yes.</p> <p>21 - - -</p> <p>22 (Exhibit Gregory-63, 11/18/04</p> <p>23 Memo, Bates UE0210450, was marked for</p> <p>24 identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">563</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. They were, I think, a</p> <p>3 cooperative of farmers in Iowa that were in</p> <p>4 the egg business.</p> <p>5 Q. And he says, "There are a</p> <p>6 couple of issues briefly touched on at the</p> <p>7 meeting that I feel compelled to discuss with</p> <p>8 you and I hope you will share them with the</p> <p>9 Animal Welfare Committee next month."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. First is the issue of</p> <p>13 backfilling. Right?</p> <p>14 A. Yes.</p> <p>15 Q. It says, "...it was stated at</p> <p>16 the meeting that some companies have found</p> <p>17 that backfilling is an economic advantage..."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall that being stated</p> <p>21 at the meeting?</p> <p>22 A. I'm going to accept the letter</p> <p>23 here today for what it is. I don't -- again,</p> <p>24 that's nine years ago, nearly nine years ago,</p> <p>25 so, you know, I don't recall this, but I will</p>

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<p style="text-align: right;">564</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 accept the letter for what it is.</p> <p>3 Q. Fair enough. He says, "There</p> <p>4 are practices, like back filling, that we</p> <p>5 would like to continue but cannot for the</p> <p>6 betterment of the industry as a whole."</p> <p>7 Right?</p> <p>8 A. Yes, he does.</p> <p>9 Q. He says, "I ask that you please</p> <p>10 consider outlawing backfilling entirely to</p> <p>11 maintain Animal Care Certification!"</p> <p>12 Do you see that?</p> <p>13 A. I think he's doing that by</p> <p>14 justification saying that animal advocates</p> <p>15 would be -- he doesn't believe they'd be in</p> <p>16 favor of that.</p> <p>17 Q. He also says, "The industry</p> <p>18 certainly doesn't need the extra birds</p> <p>19 producing eggs..." Right?</p> <p>20 A. That's what he says, yes.</p> <p>21 Q. And, in fact, that's what</p> <p>22 happened, backfilling was outlawed entirely.</p> <p>23 Correct?</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question. Mischaracterizes</p>	<p style="text-align: right;">566</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. He quotes you saying, "It's</p> <p>3 not the new construction causing this problem</p> <p>4 its the old hens & back filling." Do you</p> <p>5 see that?</p> <p>6 A. Yes.</p> <p>7 Q. Is that consistent with your</p> <p>8 views at the time?</p> <p>9 A. Yes.</p> <p>10 Q. At the end Mr. Dean says, "Stop</p> <p>11 the back filling, get rid of the old hens &</p> <p>12 the industry will return to profitability."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And that was forwarded to you.</p> <p>16 Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And that's what happened,</p> <p>19 backfilling was stopped. Right?</p> <p>20 A. Yes. Let me expand a little</p> <p>21 further on it, if you don't mind, about</p> <p>22 backfilling.</p> <p>23 Q. Well, we actually have a</p> <p>24 limited time and it's a good time to take a</p> <p>25 break.</p>
<p style="text-align: right;">565</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 this witness' testimony.</p> <p>3 THE WITNESS: I don't know when</p> <p>4 backfilling was outlawed.</p> <p>5 - - -</p> <p>6 (Exhibit Gregory-64, E-Mail</p> <p>7 chain, Bates NL0017442, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Let me hand you what's been</p> <p>12 marked Gregory-64. It's Bates stamped</p> <p>13 NL0017442, and I'll ask if you can identify</p> <p>14 this as an e-mail exchange with Robert</p> <p>15 Deffner on November 10, 2004.</p> <p>16 A. Yes.</p> <p>17 Q. Mr. Deffner forwards on an</p> <p>18 e-mail he received from a Jim Dean from Sky</p> <p>19 Foods. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Mr. Dean reflects -- puts</p> <p>22 forward some comments that he attributes to</p> <p>23 you having made at a Marketing Committee</p> <p>24 meeting. Right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">567</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Because there is a good</p> <p>3 explanation for this that has to do with the</p> <p>4 government.</p> <p>5 MR. OLSON: Let's take a break.</p> <p>6 VIDEOGRAPHER: The time is</p> <p>7 approximately 2:08 p.m. This ends</p> <p>8 tape three, volume two. We're now off</p> <p>9 the record.</p> <p>10 - - -</p> <p>11 (A recess was taken.)</p> <p>12 - - -</p> <p>13 VIDEOGRAPHER: The time is</p> <p>14 approximately 2:22 p.m. This begins</p> <p>15 tape four, volume two. We are back on</p> <p>16 the record.</p> <p>17 - - -</p> <p>18 (Exhibit Gregory-65, 11/23/04</p> <p>19 United Voices, Bates UE0368631 -</p> <p>20 UE0368636, was marked for</p> <p>21 identification.)</p> <p>22 - - -</p> <p>23 BY MR. OLSON:</p> <p>24 Q. Mr. Gregory, I've handed what</p> <p>25 we've marked as Gregory Exhibit 65. This is</p>

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<p style="text-align: right;">568</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Bates stamped UE0368631 through 36. I'll ask</p> <p>3 if you can identify it as a November 23,</p> <p>4 2004, United Voices that you edited?</p> <p>5 A. Yes.</p> <p>6 Q. And the cover story here is</p> <p>7 report on what had happened at the egg</p> <p>8 industry economic summit. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. If you look at the second page</p> <p>11 in the middle, there's a paragraph that says,</p> <p>12 "Recognizing that it serves no purpose to</p> <p>13 place blame on someone, many attendees</p> <p>14 elected to be a part of the solution."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. "...those attending producers</p> <p>18 dedicated primarily to shell egg market and</p> <p>19 with approximate 100 million hens made their</p> <p>20 intentions known by stating that they would</p> <p>21 implement one or both of the following</p> <p>22 recommendations." Right?</p> <p>23 A. Yes.</p> <p>24 Q. And then there's two options</p> <p>25 put forth, both designed to reduce supply.</p>	<p style="text-align: right;">570</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 others listed that expressed at the meeting</p> <p>3 that they intended to follow one of those two</p> <p>4 options that are laid out. Right?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question.</p> <p>7 THE WITNESS: They -- during</p> <p>8 that conference, it is -- the</p> <p>9 newsletter is implying that they made</p> <p>10 those intentions.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Then underneath the list, you</p> <p>13 say that in addition, letters have been sent</p> <p>14 to UEP members who weren't in attendance</p> <p>15 asking them then if they want to make their</p> <p>16 intentions known. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. You can put that aside.</p> <p>19 - - -</p> <p>20 (Exhibit Gregory-66, 11/29/04</p> <p>21 Letter, Bates UE0176003, was marked</p> <p>22 for identification.)</p> <p>23 - - -</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Let me hand you what's been</p>
<p style="text-align: right;">569</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And then you list the companies</p> <p>5 that had made their intentions known during</p> <p>6 the meeting itself. Correct?</p> <p>7 A. I think that's true, yes.</p> <p>8 Q. It lists Wilcox Farms, for</p> <p>9 example. Right?</p> <p>10 A. Yes.</p> <p>11 Q. Sunrise Farms of California, is</p> <p>12 that part of Nu-Cal?</p> <p>13 A. They are, yes. They are one of</p> <p>14 the members of Nu-Cal.</p> <p>15 Q. National Foods Corp.?</p> <p>16 A. Yes.</p> <p>17 Q. Cal-Maine?</p> <p>18 A. Yes.</p> <p>19 Q. Moark?</p> <p>20 A. Yes.</p> <p>21 Q. Hillandale Farms of Pa.?</p> <p>22 A. Yes.</p> <p>23 Q. Midwest Poultry Services?</p> <p>24 A. Yes.</p> <p>25 Q. And all those companies and the</p>	<p style="text-align: right;">571</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 marked as Gregory-66. This is document is</p> <p>3 Bates stamped UE0176003.</p> <p>4 Can you identify it as a letter</p> <p>5 you sent to Cal-Maine Foods on November 29,</p> <p>6 2004?</p> <p>7 A. Yes.</p> <p>8 Q. And this reflects that even the</p> <p>9 companies that had made their intentions</p> <p>10 known during the meeting, UEP also followed</p> <p>11 up with them to --</p> <p>12 A. Verify their intention.</p> <p>13 MS. LEVINE: Let Mr. Olson ask</p> <p>14 the question. You can give him the</p> <p>15 response.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. I was struggling. You were</p> <p>18 saying verify their -- verify that they had</p> <p>19 made that commitment. Correct?</p> <p>20 A. That's true.</p> <p>21 Q. And that they had signed an</p> <p>22 intention form. Right?</p> <p>23 A. No, I don't believe that at</p> <p>24 that point had they signed an intent. You</p> <p>25 have made your intention known, but I don't</p>

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<p style="text-align: right;">572</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 think they had signed anything at that point.</p> <p>3 Q. It says you signed an intention</p> <p>4 form.</p> <p>5 A. It does?</p> <p>6 Q. Underneath that sentence you</p> <p>7 were just reading.</p> <p>8 A. Okay. Okay. Okay.</p> <p>9 Q. Because there was an intention</p> <p>10 form and folks were asked to sign it. Right?</p> <p>11 A. Okay.</p> <p>12 Q. Cal-Maine and others did.</p> <p>13 Correct?</p> <p>14 A. Those that were listed, yes.</p> <p>15 Q. At the bottom you say that UEP</p> <p>16 is going to rely on that signed statement?</p> <p>17 A. Yes.</p> <p>18 Q. You can put that aside.</p> <p>19 - - -</p> <p>20 (Exhibit Gregory-67, 4/14/05</p> <p>21 E-mail, Bates UE0644788, was marked</p> <p>22 for identification.)</p> <p>23 - - -</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Now, let me hand you what we've</p>	<p style="text-align: right;">574</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that are Animal Care Certified companies --</p> <p>3 that are not Animal Certified Care companies.</p> <p>4 Right?</p> <p>5 A. That's what it says, yes.</p> <p>6 Q. And then you proceed to</p> <p>7 question whether that's a good business</p> <p>8 practice by the USDA. Right?</p> <p>9 A. Yes.</p> <p>10 Q. Whether it was good business</p> <p>11 practice by the USDA to buy from companies</p> <p>12 that were not certified companies. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Yet at this time UEP had</p> <p>15 members who were not certified companies.</p> <p>16 Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Now, do you -- are you</p> <p>19 familiar -- you can put that aside.</p> <p>20 Are you familiar with an</p> <p>21 organization called CEMA, C-E-M-A?</p> <p>22 A. Yes, Canadian Egg Marketing</p> <p>23 Agency.</p> <p>24 Q. What is that agency?</p> <p>25 A. It is the national organization</p>
<p style="text-align: right;">573</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 marked as Gregory-67. This is a one-page</p> <p>3 document Bates stamped UE0644788. Go ahead</p> <p>4 and review it.</p> <p>5 I'll ask if you can identify</p> <p>6 this as an e-mail you sent on April 14, 2005,</p> <p>7 to a Craig Morris?</p> <p>8 A. Yes.</p> <p>9 Q. And you are referring to being</p> <p>10 at Mr. Morris' with who, USDA?</p> <p>11 A. Yes.</p> <p>12 Q. And you had been at a program,</p> <p>13 a USDA program called the Commodity</p> <p>14 Procurement Conference. Correct?</p> <p>15 A. I think I was invited there</p> <p>16 because I think they wound up giving me some</p> <p>17 sort of an award or something.</p> <p>18 Q. And you write to Mr. Morris</p> <p>19 that you could not help but notice that of</p> <p>20 the egg purchases for the period May 2004</p> <p>21 through March 2005, and are those egg</p> <p>22 purchases by the USDA?</p> <p>23 A. Yes.</p> <p>24 Q. That nearly 90 percent of the</p> <p>25 purchases have been supplied by companies</p>	<p style="text-align: right;">575</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 that is responsible for the quota system, the</p> <p>3 supply/demand programs, you know, advertising</p> <p>4 promotion, I guess, et cetera. It's their</p> <p>5 national egg association.</p> <p>6 Q. And CEMA also purchases eggs</p> <p>7 from egg producers. Correct?</p> <p>8 A. No. They do -- under normal</p> <p>9 circumstances CEMA does not buy eggs from</p> <p>10 U.S. producers.</p> <p>11 Q. But on occasion they do?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question.</p> <p>14 THE WITNESS: I know what you're</p> <p>15 leading to, and there is only one</p> <p>16 occasion where I was aware of it and</p> <p>17 what the circumstances were.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. And that situation was after</p> <p>20 Sparboe Company had left the Animal Care</p> <p>21 Certified Program. Correct?</p> <p>22 A. At that time, they were not a</p> <p>23 UEP certified company.</p> <p>24 Q. And you became aware that CEMA</p> <p>25 was purchasing eggs or had purchased eggs at</p>

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<p style="text-align: right;">576</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 one time from Sparboe. Correct?</p> <p>3 A. What the situation was is that</p> <p>4 CEMA and UEP were trying to work together on</p> <p>5 animal welfare guidelines. And in speaking</p> <p>6 with their people at CEMA, they were in a</p> <p>7 situation where one of their provinces in the</p> <p>8 northwest had had a disease problem and they</p> <p>9 had to depopulate a lot of chickens. And</p> <p>10 they needed then to buy eggs in to -- over a</p> <p>11 period of time in order to fill their</p> <p>12 markets. And they asked CEMA to buy these</p> <p>13 because they didn't want to have to be</p> <p>14 going -- so CEMA talked with us about the</p> <p>15 fact that they didn't want to buy anything</p> <p>16 and they didn't want to buy anything except</p> <p>17 UEP certified eggs because they didn't want</p> <p>18 to -- you know, they didn't want to -- they</p> <p>19 wanted to know what quality they're getting</p> <p>20 and all that kind of stuff. And so we as</p> <p>21 such, you know, said okay, this is like an</p> <p>22 export because you're going to need certain</p> <p>23 eggs off this. So we'll -- why don't you</p> <p>24 work with U.S. Egg Marketers and they will</p> <p>25 take care of this and they'll make sure</p>	<p style="text-align: right;">578</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 report and they were kind of running under</p> <p>3 the cover.</p> <p>4 Q. So had CEMA purchased eggs from</p> <p>5 Sparboe Company, to your knowledge?</p> <p>6 A. I have no idea.</p> <p>7 Q. You don't know whether CEMA</p> <p>8 ever purchased eggs from Sparboe Company?</p> <p>9 A. No, I do not.</p> <p>10 Q. But you wrote Greg Pearce at</p> <p>11 CEMA and said, I don't know whether you are</p> <p>12 still purchasing eggs from Sparboe Company,</p> <p>13 but just in case you are, you need to know</p> <p>14 that Sparboe is no longer an Animal Care</p> <p>15 Certified company. Correct?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question. If you're reading</p> <p>18 from a document, you should show the</p> <p>19 witness. He can't possibly know what</p> <p>20 you're reading from.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. You did that. Correct?</p> <p>23 A. Would you show that to me?</p> <p>24 Q. I'm not certain I'm allowed to</p> <p>25 because it's produced by another company.</p>
<p style="text-align: right;">577</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 you're getting -- so at an Urner Barry</p> <p>3 conference, we believe that Greg Pearce from</p> <p>4 CEMA had meetings with Wayne Carlson from</p> <p>5 Sparboe. And out of that an agreement,</p> <p>6 something was -- a deal was made. Now, the</p> <p>7 problem of that deal is made is that eggs</p> <p>8 that were being moved out of the country, if</p> <p>9 it had gone through U.S. Egg Marketers, they</p> <p>10 would have shown up as a trade of eggs and</p> <p>11 reported on the egg clearinghouse and Urner</p> <p>12 Barry could have monitored that and seen what</p> <p>13 was happening and the USDA would -- you know,</p> <p>14 and this kind of thing. The deal was made</p> <p>15 that they would ship these eggs into Canada</p> <p>16 without them going through -- I'm sorry, they</p> <p>17 were traded through the egg clearinghouse,</p> <p>18 but agreement was reached, I believe, that</p> <p>19 where those eggs would not be reported on the</p> <p>20 egg clearinghouse and they would not have to</p> <p>21 be UEP certified eggs. So it was -- CEMA was</p> <p>22 participating in what we thought in not</p> <p>23 following up on wanting to buy Animal Care</p> <p>24 Certified eggs. But worse than that, those</p> <p>25 eggs were not being reported in the marketing</p>	<p style="text-align: right;">579</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 You know you contacted Mr. Pearce about this.</p> <p>3 Right?</p> <p>4 MS. LEVINE: You can testify to</p> <p>5 what you recall.</p> <p>6 THE WITNESS: Yes, I had a</p> <p>7 conversation -- I'm not sure I had the</p> <p>8 conversation with Greg Pearce or</p> <p>9 whether I had the conversation with</p> <p>10 his boss. I'm not sure.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. You communicated to someone</p> <p>13 at --</p> <p>14 MR. HUTCHINSON: What was your</p> <p>15 comment about the document? Who was</p> <p>16 it produced by?</p> <p>17 MR. OLSON: There's a part of</p> <p>18 the chain that Mr. Gregory is not on</p> <p>19 that I believe was produced by Sparboe</p> <p>20 designated highly confidential. But</p> <p>21 I'm only referring to the part of the</p> <p>22 language Mr. Gregory wrote.</p> <p>23 MR. HUTCHINSON: It's a highly</p> <p>24 confidential document, but it's not --</p> <p>25 it wasn't clawed back as privileged?</p>

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<p style="text-align: right;">580</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: No.</p> <p>3 MR. HUTCHINSON: Okay. I just</p> <p>4 wanted to clarify that.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. And you wrote to CEMA saying,</p> <p>7 "I believe that any eggs purchased by CEMA</p> <p>8 should meet standards that meet the ACC</p> <p>9 guidelines and have been audited to confirm</p> <p>10 this."</p> <p>11 MS. LEVINE: I'm going to repeat</p> <p>12 my objection. Mr. Olson, you know</p> <p>13 that it is improper --</p> <p>14 MR. OLSON: That's fine. Your</p> <p>15 objection is noted. Thank you.</p> <p>16 MS. LEVINE: It is improper to</p> <p>17 ask a witness, reading from a</p> <p>18 document, to ask him to memorize</p> <p>19 something that is years old. So this</p> <p>20 witness can only testify if you show</p> <p>21 him the document.</p> <p>22 MR. OLSON: Your objection is</p> <p>23 noted. Thank you.</p> <p>24 MR. HUTCHINSON: Mr. Olson, I</p> <p>25 can look at the document and</p>	<p style="text-align: right;">582</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Scientific Committee were at work, McDonald's</p> <p>3 was also interested in animal welfare</p> <p>4 guidelines and was going to do their own</p> <p>5 thing because McDonald's had had a major</p> <p>6 embarrassment in Europe over an animal</p> <p>7 welfare issue, and so they became real</p> <p>8 interested in developing animal welfare</p> <p>9 guidelines. So we shared all of our</p> <p>10 scientific recommendations with McDonald's.</p> <p>11 In fact, Dr. Armstrong and myself, and I</p> <p>12 believe it was Bob Krouse, met on several</p> <p>13 occasions with Bob Langer at McDonald's. Bob</p> <p>14 Langer from McDonald's also was a speaker at</p> <p>15 one of the UEP meetings. Bob Langer</p> <p>16 eventually came out with the McDonald's</p> <p>17 guidelines which were slightly different than</p> <p>18 UEP's, and they -- Bob Langer had said I</p> <p>19 cannot require our egg suppliers to implement</p> <p>20 our guidelines on any more production than</p> <p>21 what is needed to fill our orders. But I</p> <p>22 would prefer that our suppliers be, you know,</p> <p>23 on the UEP certified program as well. And</p> <p>24 would you keep me informed.</p> <p>25 So we had this kind of</p>
<p style="text-align: right;">581</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 perhaps --</p> <p>3 MR. OLSON: We'll do that the</p> <p>4 next break. It really doesn't need to</p> <p>5 be that complicated, but we can do it.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Now, did you ever have any</p> <p>8 other communications with customers of</p> <p>9 Sparboe about Sparboe having left the</p> <p>10 program?</p> <p>11 A. Yes.</p> <p>12 Q. And who else did you have those</p> <p>13 conversations with?</p> <p>14 A. If I'm provided an opportunity</p> <p>15 to explain the answer, then I'll do so.</p> <p>16 Q. Let's just start with the</p> <p>17 identities of customers.</p> <p>18 A. McDonald's.</p> <p>19 Q. Who else?</p> <p>20 A. Nobody.</p> <p>21 Q. Just McDonald's?</p> <p>22 A. To my knowledge, that was the</p> <p>23 only one.</p> <p>24 Now, let me explain. During</p> <p>25 the period of time when UEP and our</p>	<p style="text-align: right;">583</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 conversation. We had lots of conversations</p> <p>3 about animal welfare in general. So he</p> <p>4 wanted to know what was going on. So without</p> <p>5 identifying Sparboe, I wrote a letter, wrote</p> <p>6 an e-mail to Bob Langer saying something to</p> <p>7 the effect that I need to let you know that,</p> <p>8 one, that an egg supplier, that is a UEP</p> <p>9 certified company has informed us that</p> <p>10 they're dropping off the program, but they</p> <p>11 fully -- intend to fully comply with the</p> <p>12 McDonald's guidelines. Something to that</p> <p>13 effect. My understanding what happened is</p> <p>14 that Bob Langer then turned that thing over,</p> <p>15 my e-mail over to somebody in the procurement</p> <p>16 department and the next thing I know, I'm</p> <p>17 getting threatening phone calls from the</p> <p>18 Sparboe Company about it.</p> <p>19 - - -</p> <p>20 (Exhibit Gregory-68, 9/6/05</p> <p>21 Letter, Bates NL002442 - NL002444, was</p> <p>22 marked for identification.)</p> <p>23 - - -</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Let me hand you what's been</p>

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<p style="text-align: right;">584</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 marked Gregory Exhibit 68. Mr. Gregory, did</p> <p>3 you disclose the fact that you had had this</p> <p>4 discussion with McDonald's with President Al</p> <p>5 Pope at the time?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you disclose the</p> <p>8 conversations you had with CEMA with Al Pope</p> <p>9 at the time?</p> <p>10 A. I don't recall.</p> <p>11 Q. Why don't you just hold that</p> <p>12 and we will -- and because I've been granted</p> <p>13 permission to give you this prior document,</p> <p>14 let me hand you Gregory Exhibit 69.</p> <p>15 - - -</p> <p>16 (Exhibit Gregory-69, E-mail</p> <p>17 chain, Bates SF000312 - SF000322, was</p> <p>18 marked for identification.)</p> <p>19 - - -</p> <p>20 BY MR. OLSON:</p> <p>21 Q. And this is a series of</p> <p>22 documents, there's really only one that's</p> <p>23 relevant.</p> <p>24 MS. LEVINE: Steig, 69 starts</p> <p>25 with SF000312.</p>	<p style="text-align: right;">586</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 to the question. Insinuation.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. It was your job to go out there</p> <p>6 and make sure that everyone buying eggs knew</p> <p>7 whether Sparboe was still in the program or</p> <p>8 not?</p> <p>9 MS. LEVINE: Object to the form</p> <p>10 of the question. Mischaracterizes</p> <p>11 what this witness testified. You can</p> <p>12 testify.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. And this -- you continue to</p> <p>16 say, "I believe that any eggs purchased by</p> <p>17 CEMA should meet standards that meet the ACC</p> <p>18 guidelines and have been audited to confirm</p> <p>19 this."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 MS. LEVINE: Where are you</p> <p>23 reading?</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Do you notice what Mr. Pearce</p>
<p style="text-align: right;">585</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: And it goes through</p> <p>3 what?</p> <p>4 MS. LEVINE: And it goes through</p> <p>5 SF000322.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Mr. Gregory, if you could look</p> <p>8 at 315 of Exhibit 69. This is an e-mail that</p> <p>9 you wrote to Greg Pearce at CEMA on June 20,</p> <p>10 2005. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you say to Mr. Pearce, "I</p> <p>13 don't know whether CEMA is still purchasing</p> <p>14 eggs from the Sparboe Company but just in</p> <p>15 case you are, you need to know that effective</p> <p>16 June 20, 2005 that the Sparboe Company is no</p> <p>17 longer an Animal Care Certified company."</p> <p>18 Do you see that?</p> <p>19 A. I do. And the reason was is</p> <p>20 that it had been their intentions to buy</p> <p>21 eggs, Animal Care Certified eggs and I didn't</p> <p>22 know whether the company had misrepresented</p> <p>23 themselves with that or not.</p> <p>24 Q. And you had designated yourself</p> <p>25 the police of the market. Right?</p>	<p style="text-align: right;">587</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 did with your e-mail?</p> <p>3 A. No, I do not.</p> <p>4 Q. He forwards it on to some</p> <p>5 others.</p> <p>6 A. Where would I find that at?</p> <p>7 Q. The next e-mail in the chain.</p> <p>8 MS. LEVINE: The top of the</p> <p>9 e-mail.</p> <p>10 THE WITNESS: Stephen Lovshin,</p> <p>11 is that what it is? Tim Lambert is</p> <p>12 the -- was the chair -- was the</p> <p>13 president, and I think -- yeah.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. The president of CEMA. Right?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. And he doesn't say good thing</p> <p>18 Mr. Gregory told us this information, we were</p> <p>19 dying to know, does he? What does he say?</p> <p>20 A. He says, "Politics will never</p> <p>21 cease."</p> <p>22 Q. And that's what was going on</p> <p>23 here. Right?</p> <p>24 A. No, I don't think that's the</p> <p>25 case.</p>

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<p style="text-align: right;">588</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let's now look at 68, Exhibit</p> <p>3 68.</p> <p>4 A. Do you want this one back or is</p> <p>5 this --</p> <p>6 Q. That's an initial exhibit.</p> <p>7 A. 68.</p> <p>8 Q. And this is Bates stamped</p> <p>9 NL002442 through 2444.</p> <p>10 Can you identify it as an</p> <p>11 e-mail written to Roger Deffner, and copying</p> <p>12 Al Pope and others from UEP on September 6,</p> <p>13 2005?</p> <p>14 A. Yes.</p> <p>15 Q. And Mr. Sparboe is saying that</p> <p>16 it's come to his attention that you had</p> <p>17 contacted some of Sparboe's customers.</p> <p>18 Correct?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And that that was outside of</p> <p>21 UEP's stated procedures. Correct?</p> <p>22 A. That's what he said.</p> <p>23 Q. And that's true. Correct?</p> <p>24 A. That's not true.</p> <p>25 Q. Did you -- following this</p>	<p style="text-align: right;">590</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't recall that.</p> <p>3 Q. You didn't want those</p> <p>4 purchasing eggs in the industry to purchase</p> <p>5 from companies that weren't certified.</p> <p>6 Right?</p> <p>7 MS. LEVINE: Object to the form</p> <p>8 of the question. Mischaracterizes</p> <p>9 what Mr. Gregory said.</p> <p>10 THE WITNESS: Show me something</p> <p>11 that says that. I don't recall doing</p> <p>12 that.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. You don't recall sending out</p> <p>15 form letters to purchasers saying they</p> <p>16 shouldn't purchase eggs that weren't</p> <p>17 certified?</p> <p>18 A. I do not recall that.</p> <p>19 Q. So I've handed you Gregory-70.</p> <p>20 It's Bates stamped NL00217575.</p> <p>21 A. Right.</p> <p>22 Q. Can you identify this as the</p> <p>23 minutes of a meeting, producer meeting in</p> <p>24 Minneapolis held on December 6, 2005, as</p> <p>25 recorded by you?</p>
<p style="text-align: right;">589</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 letter, did you sit down with Mr. Pope and</p> <p>3 Mr. Deffner and discuss what you had done?</p> <p>4 A. I don't recall. I don't think</p> <p>5 so.</p> <p>6 Q. You can put that aside.</p> <p>7 - - -</p> <p>8 (Exhibit Gregory-70, Producer</p> <p>9 Meeting In Minneapolis December 6,</p> <p>10 2005, Bates NL0217575, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Let me hand you what's been</p> <p>15 marked Gregory-70.</p> <p>16 A. It was my job to follow the</p> <p>17 program and make sure the program was</p> <p>18 credible. It was my job to inform the</p> <p>19 industry who it was and who was not UEP</p> <p>20 certified companies, as I told you earlier,</p> <p>21 the reasons why.</p> <p>22 Q. And from time to time, in fact,</p> <p>23 you would send out form letters to egg</p> <p>24 purchasers saying that they should only buy</p> <p>25 certified eggs. Correct?</p>	<p style="text-align: right;">591</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't identify these as</p> <p>3 meeting minutes. I identify this as a</p> <p>4 summary of that meeting.</p> <p>5 Q. Why did this meeting take place</p> <p>6 in Minneapolis?</p> <p>7 A. There were some people in that</p> <p>8 area up there that had some real differences</p> <p>9 over the Animal Care certified -- over the</p> <p>10 Animal Care Program, and we decided that we</p> <p>11 would go up to Minneapolis and meet with this</p> <p>12 group of people and listen to their concerns.</p> <p>13 Q. And this identifies some of the</p> <p>14 concerns that had been raised. Correct?</p> <p>15 A. I have not read it again, but</p> <p>16 I'm sure it does.</p> <p>17 Q. There's a heading that says,</p> <p>18 "Issues & Concerns Expressed By Producers."</p> <p>19 Right?</p> <p>20 A. Yes.</p> <p>21 Q. Including the appointment of</p> <p>22 members on the Animal Welfare Committee and</p> <p>23 on the Price Discovery Committee. Right?</p> <p>24 A. Yeah.</p> <p>25 Q. The 100 percent rule. Right?</p>

68 (Pages 588 to 591)

<p style="text-align: right;">592</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Number 5 suggested -- it says,</p> <p>4 "Suggested UEP staff had urged USDA to</p> <p>5 purchase eggs from only 'UEP Certified'</p> <p>6 companies." Right?</p> <p>7 A. Yes.</p> <p>8 Q. It's written as if it's unclear</p> <p>9 whether that really happened. Right?</p> <p>10 A. It did not happen. I mean,</p> <p>11 yes, I -- we may have had conversations with</p> <p>12 USDA about buying, but I meant USDA did not</p> <p>13 have a policy to buy only UEP certified eggs.</p> <p>14 Q. Right. But you had urged them</p> <p>15 to do so?</p> <p>16 A. Yes, sir, I think I did.</p> <p>17 Q. But you didn't disclose that to</p> <p>18 these producers when they raised that concern</p> <p>19 that you had done it, did you?</p> <p>20 A. I think -- I don't know.</p> <p>21 You're speculating there I think. Does it</p> <p>22 say that I had or had not?</p> <p>23 Q. Well, the word "suggested"</p> <p>24 indicates that there's some doubt about</p> <p>25 whether it occurred. Right?</p>	<p style="text-align: right;">594</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Gregory-71, Various</p> <p>3 documents, Bates MFI0005548 -</p> <p>4 MFI0005576, was marked for</p> <p>5 identification.)</p> <p>6 - - -</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Let me hand you a document</p> <p>9 marked Gregory-71. This is a packet of</p> <p>10 materials, I really just want to ask you</p> <p>11 about something in the middle of it.</p> <p>12 A. In the middle?</p> <p>13 Q. Yeah. But I'll steer you there</p> <p>14 in one second. It's Bates stamped MFI0005548</p> <p>15 and it goes through 5576.</p> <p>16 In the middle there is a</p> <p>17 document, it starts on 5564, that's titled,</p> <p>18 "HISTORICAL VIEW OF 'UEP CERTIFIED' PROGRAM."</p> <p>19 If you could briefly take a look at that</p> <p>20 document and then see if you can help us</p> <p>21 identify it?</p> <p>22 A. It's amazing to me. I don't</p> <p>23 know where you got all this stuff at.</p> <p>24 You want me to read this?</p> <p>25 Q. Well, just -- if you can just</p>
<p style="text-align: right;">593</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. That's right.</p> <p>3 Q. Now, number 13 is -- states</p> <p>4 "The 'UEP Certified' program is as such a</p> <p>5 market restriction."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do. But you have to</p> <p>8 understand that these are things that they're</p> <p>9 saying. It doesn't make -- it doesn't mean</p> <p>10 that those things are true.</p> <p>11 Q. I understand that. But that</p> <p>12 was a concern that was being raised at this</p> <p>13 time. Correct?</p> <p>14 A. Right.</p> <p>15 Q. What was your understanding of</p> <p>16 that concern?</p> <p>17 A. I don't recall.</p> <p>18 Q. So sitting here today, you</p> <p>19 don't have an understanding of what that</p> <p>20 concern was?</p> <p>21 A. I don't want to -- I don't want</p> <p>22 to say something that might not be right, so</p> <p>23 my answer I think has to be I don't recall.</p> <p>24 Q. You can put that aside.</p> <p>25 - - -</p>	<p style="text-align: right;">595</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 scan it. Really this is one I'm just</p> <p>3 wondering if you can help us identify what</p> <p>4 this document is and where it came from.</p> <p>5 A. I suspect that I wrote it.</p> <p>6 Q. Do you recall the context in</p> <p>7 which you prepared this document?</p> <p>8 A. No, I do not.</p> <p>9 Q. Have you briefly reviewed the</p> <p>10 two pages of the document?</p> <p>11 A. I have not.</p> <p>12 Q. Please do that.</p> <p>13 A. Give me a moment.</p> <p>14 Q. Sure.</p> <p>15 A. (Reviewing document.)</p> <p>16 I've scanned it.</p> <p>17 Q. Does it refresh your</p> <p>18 recollection about the context in which it</p> <p>19 was prepared?</p> <p>20 A. It does not, but I'll accept it</p> <p>21 for what it is.</p> <p>22 Q. And what it is, is it lays out</p> <p>23 basically a history of some of the key</p> <p>24 moments in the animal welfare -- the</p> <p>25 development of the program. Correct?</p>

69 (Pages 592 to 595)

<p style="text-align: right;">596</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. If you look at the middle of</p> <p>4 the second page, there's a reference to the</p> <p>5 change in the backfilling policy. Do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. It says, "Recognizing that the</p> <p>9 practice of backfilling layer houses with</p> <p>10 mature hens was potentially creating an</p> <p>11 uneven playing field among producers, the</p> <p>12 Animal Welfare Committee and Board adopted a</p> <p>13 policy against backfilling in December 2004."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And how did the practice of</p> <p>17 backfilling layer houses create an uneven</p> <p>18 playing field?</p> <p>19 A. Well, when the guidelines and</p> <p>20 when the programs first started, it was</p> <p>21 expected that you counted the number of hens</p> <p>22 on the date that they were put in the house</p> <p>23 initially. And that you were allowed during</p> <p>24 this house average and phase-in schedule that</p> <p>25 you would put in this number of birds on the</p>	<p style="text-align: right;">598</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and we had argued that we needed in the egg</p> <p>3 industry to identify ours by flock number.</p> <p>4 So when you would backfill and bring birds in</p> <p>5 from another source, that would be in</p> <p>6 violation of that USDA regulation.</p> <p>7 Now, we knew also at the same</p> <p>8 time because we had been working with FDA</p> <p>9 for -- we worked with FDA for ten years on</p> <p>10 what finally became the FDA egg safety rule,</p> <p>11 so we knew much of what was in the egg safety</p> <p>12 rule and what was coming. And in that egg</p> <p>13 safety rule, it was going to require you to</p> <p>14 do environmental testing of your flock at</p> <p>15 certain weeks of age to determine whether</p> <p>16 there was salmonella present in that flock.</p> <p>17 Now, that -- and so each flock was -- had to</p> <p>18 be tested, has to be tested. If you were to</p> <p>19 bring birds from an older flock or any flock</p> <p>20 back into that house, then you lose -- you</p> <p>21 know, you could be very well in violation of</p> <p>22 an AFDA egg safety law. Backfilling for any</p> <p>23 number of reasons was a real potential</p> <p>24 problem.</p> <p>25 Q. Did you just answer why</p>
<p style="text-align: right;">597</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 day that the flock started in the layer</p> <p>3 house. It was expected that because of this</p> <p>4 house averaging, that you would have some</p> <p>5 mortality throughout the course of your --</p> <p>6 and you would move the birds within the house</p> <p>7 to then balance out that space and provide</p> <p>8 more space for a bird. It was never</p> <p>9 envisioned that people would -- that</p> <p>10 producers would then take an older flock that</p> <p>11 they were ready to dispose of and take those</p> <p>12 birds and bring them back into that house</p> <p>13 filling up cages to replace the mortality</p> <p>14 that had naturally occurred. So in other</p> <p>15 words, it violated in our opinion and the</p> <p>16 Scientific Committee's opinion, what was</p> <p>17 expected with those space guidelines. And</p> <p>18 the backfilling issue was another issue, I</p> <p>19 don't know whether it was a factor at that</p> <p>20 time or not. But you see we have the USDA</p> <p>21 animal identification system and we had</p> <p>22 argued hard with USDA that instead of having</p> <p>23 an animal identification system for the egg</p> <p>24 industry, in livestock and hogs, other</p> <p>25 livestock they're identified by the animal</p>	<p style="text-align: right;">599</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 backfilling created an uneven playing field</p> <p>3 among producers?</p> <p>4 A. I think the reason is that at</p> <p>5 the time that we're talking about here, there</p> <p>6 are some producers that are following what</p> <p>7 was intention of the guideline and they were</p> <p>8 not backfilling. Other producers, because</p> <p>9 there was not a prohibition against it, were</p> <p>10 backfilling. And as a result of that, that</p> <p>11 meant that they had an advantage over those</p> <p>12 people that were following what we thought</p> <p>13 were the guidelines.</p> <p>14 Q. So it created an uneven playing</p> <p>15 field because some people were doing it and</p> <p>16 some people weren't doing it?</p> <p>17 A. Right.</p> <p>18 Q. You can put that aside.</p> <p>19 Now, back to Exhibit 70,</p> <p>20 there's a question I forgot to ask. Let me</p> <p>21 know when you have that in front of you.</p> <p>22 A. Yes, I have it.</p> <p>23 Q. This is called a producer</p> <p>24 meeting. Were all the people invited to the</p> <p>25 meeting producers?</p>

70 (Pages 596 to 599)

<p style="text-align: right;">600</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. It's -- I would have to say</p> <p>3 this is not just producers, this is UEP and</p> <p>4 -- UEA -- and UEA further processors. One,</p> <p>5 two --</p> <p>6 MS. LEVINE: I'm sorry, what</p> <p>7 document are we on?</p> <p>8 MR. OLSON: Exhibit 70.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. Who were the people who were</p> <p>11 UEA further processors that --</p> <p>12 A. Terry Profitt and Norm Stocker</p> <p>13 worked for Sunny Fresh Foods, Cargill, Sunny</p> <p>14 Fresh Foods.</p> <p>15 Q. Any others that you notice?</p> <p>16 A. That's what I'm looking at now.</p> <p>17 I believe Phil Sonstegard at that time, I</p> <p>18 don't know when he built his farm, but at</p> <p>19 that time Phil Sonstegard may have been an</p> <p>20 egg products company, didn't own any</p> <p>21 chickens, but he was a UEA further processor</p> <p>22 member.</p> <p>23 Q. Any others that you notice</p> <p>24 sitting here right now?</p> <p>25 A. No.</p>	<p style="text-align: right;">602</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 chain, Bates RWS 000027615 &</p> <p>3 RWS 000027616, was marked for</p> <p>4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. OLSON:</p> <p>7 Q. I've handed you what's been</p> <p>8 marked Gregory-72. This is Bates stamped</p> <p>9 RWS 000027615 through 616. Please briefly</p> <p>10 review it and let me know when you're done.</p> <p>11 A. (Reviewing document.)</p> <p>12 What's the question?</p> <p>13 Q. Can you identify this as an</p> <p>14 e-mail, the top one, that you received from</p> <p>15 Paul Sauder on August 8, 2006?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what this e-mail</p> <p>18 exchange concerns? Do you recall the</p> <p>19 situation?</p> <p>20 A. Give me just a moment to think</p> <p>21 about that.</p> <p>22 Q. Sure.</p> <p>23 MS. LEVINE: Gene, you can only</p> <p>24 talk to me if it's a privilege</p> <p>25 communication.</p>
<p style="text-align: right;">601</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can put that aside.</p> <p>3 Now, AEB, the American Egg</p> <p>4 Board provided some funding to UEP. Correct?</p> <p>5 A. Yes. They did at times, yes.</p> <p>6 Q. And some of that funding --</p> <p>7 were there restrictions on what that funding</p> <p>8 could be used for?</p> <p>9 A. Yes, there was. And we were</p> <p>10 subject to an annual audit both by AEB and by</p> <p>11 USDA.</p> <p>12 Q. And was there a restriction</p> <p>13 that AEB funds could not be used on -- for</p> <p>14 work on animal welfare issues?</p> <p>15 A. I think that was -- well, no,</p> <p>16 not on animal welfare issues. It was</p> <p>17 restricted that it could not be used to</p> <p>18 promote or do anything for the UEP certified</p> <p>19 program, I believe is what it was. In fact,</p> <p>20 money was used for animal welfare things.</p> <p>21 Q. But it could not be used for</p> <p>22 the program. That's your understanding?</p> <p>23 A. That's what I believe, yes.</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-72, E-mail</p>	<p style="text-align: right;">603</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Do you want to take</p> <p>3 a little break, a short break?</p> <p>4 MS. LEVINE: Why don't we take a</p> <p>5 little break.</p> <p>6 MR. OLSON: Okay.</p> <p>7 THE WITNESS: I just need two</p> <p>8 minutes. I'd like to talk to Troy, if</p> <p>9 I could.</p> <p>10 MR. OLSON: Well, we were going</p> <p>11 to take break anyway, so let's just</p> <p>12 take a break.</p> <p>13 VIDEOGRAPHER: The time is</p> <p>14 approximately 3:00. We are off the</p> <p>15 record.</p> <p>16 - - -</p> <p>17 (A recess was taken.)</p> <p>18 - - -</p> <p>19 VIDEOGRAPHER: The time is</p> <p>20 approximately 3:07 p.m. We're back on</p> <p>21 the record.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Mr. Gregory, we're looking at</p> <p>24 Gregory-72, and the question is whether you</p> <p>25 know what this e-mail exchange concerns?</p>

71 (Pages 600 to 603)

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<p style="text-align: right;">604</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes, I do. And I'll try to</p> <p>3 explain it to you. First of all, let me</p> <p>4 apologize because I normally don't talk about</p> <p>5 anyone else. So I'm in a bad position here.</p> <p>6 What this is, is that the person that I'm</p> <p>7 writing about that is on the American Egg</p> <p>8 Board and has challenged AEB providing any</p> <p>9 funding for any animal welfare issues funded</p> <p>10 through UEP. That person on that AEB board,</p> <p>11 it was a pattern of going for quite a long</p> <p>12 time, challenging my authority, threatening</p> <p>13 to sue me, not just her, but her father.</p> <p>14 It's a whole history of challenges against me</p> <p>15 and things that UEP does. So the lady being</p> <p>16 referred to here is Beth Snell who is with</p> <p>17 the Sparboe Company.</p> <p>18 Q. That is presumably who Paul</p> <p>19 Sauder is referring to?</p> <p>20 A. That's who Paul Sauder is</p> <p>21 referring to.</p> <p>22 Q. You can put that aside.</p> <p>23 - - -</p> <p>24 (Exhibit Gregory-73, E-mail</p> <p>25 chain, Bates RWS 000015952, was marked</p>	<p style="text-align: right;">606</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Producer Committee at this time?</p> <p>3 A. No, Jason was not on. Jason</p> <p>4 was like an advisor, supporter, whatever it</p> <p>5 was. He was a nonvoting member. And he was</p> <p>6 there representing the retail market,</p> <p>7 representing Wegmans so we would get retail</p> <p>8 perspective just like Kevin Whaley did to</p> <p>9 represent Walmart.</p> <p>10 Q. When you say "he was there,"</p> <p>11 you mean he was there at the Producer</p> <p>12 Committee meetings?</p> <p>13 A. Yes.</p> <p>14 Q. You refer to a producer</p> <p>15 proposing idea. The idea is laid out in the</p> <p>16 e-mail. Do you know what producer proposed</p> <p>17 that idea?</p> <p>18 A. I don't recall who that was.</p> <p>19 Q. Do you know if that idea was</p> <p>20 adopted?</p> <p>21 A. I do not know.</p> <p>22 Q. Who is Ken Klippen?</p> <p>23 A. Ken Klippen is a former</p> <p>24 employee of UEP.</p> <p>25 Q. And then he -- what did he do</p>
<p style="text-align: right;">605</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 for identification.)</p> <p>3 - - -</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Let me hand you a document</p> <p>6 marked Gregory-73.</p> <p>7 A. I want you to know that kind of</p> <p>8 thing is not easy for me.</p> <p>9 Q. That's why we're moving on.</p> <p>10 A. Okay.</p> <p>11 Q. This is a single-page document,</p> <p>12 Bates stamped RWS 000015952. Let me know</p> <p>13 when you've reviewed it, please.</p> <p>14 A. I've read it.</p> <p>15 Q. Can you identify the bottom</p> <p>16 e-mail as one that you wrote to a number of</p> <p>17 people on August 4, 2006?</p> <p>18 A. I believe those people were</p> <p>19 members of the Animal Producer Committee for</p> <p>20 animal welfare.</p> <p>21 Q. Who is Jason Wadsworth?</p> <p>22 A. Jason Wadsworth, as I said</p> <p>23 earlier, was the -- worked on the egg farm</p> <p>24 for Wegmans.</p> <p>25 Q. Your belief is he was on the</p>	<p style="text-align: right;">607</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 after he left UEP?</p> <p>3 A. Well, it was a series of</p> <p>4 events. He left UEP and he went to London to</p> <p>5 work for the International Egg Commission.</p> <p>6 That didn't last very long. He came back and</p> <p>7 he worked for Eggland's Best, that didn't</p> <p>8 last very long. He went to work for American</p> <p>9 Dehydrated Foods I think it was, that didn't</p> <p>10 last very long. And eventually -- he had</p> <p>11 worked for UEP in our Atlanta office. And</p> <p>12 eventually Al Pope hired him to be our</p> <p>13 government relations staff person in</p> <p>14 Washington, D.C. And at one point in time</p> <p>15 then he said that he was having some back</p> <p>16 problems, his doctor advised him the stress</p> <p>17 of the job, whatever it was, that he needed</p> <p>18 to resign. So we gave him a severance</p> <p>19 package and a party and so forth. After he</p> <p>20 left us, I think he set up his own consulting</p> <p>21 company. And it might have been Klippen and</p> <p>22 Associates. You want me to go on with who he</p> <p>23 worked for after that and all that kind of</p> <p>24 stuff?</p> <p>25 Q. Was he doing his consulting</p>

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<p style="text-align: right;">608</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 company at the time he became involved in</p> <p>3 working with the USDA on a potential process</p> <p>4 verified program?</p> <p>5 A. He was -- yes, he was working</p> <p>6 on his own at that time, and he may, I think,</p> <p>7 have been working as a consultant for the</p> <p>8 Sparboe Company.</p> <p>9 Q. And the Sparboe Company was --</p> <p>10 A. He eventually became an</p> <p>11 employee of Sparboe's.</p> <p>12 Q. And the Sparboe Company was one</p> <p>13 of several companies that had raised</p> <p>14 particular concern at this time in 2006 about</p> <p>15 the 100 percent rule. Right?</p> <p>16 A. Yes.</p> <p>17 Q. They didn't --</p> <p>18 A. I'm sure so, yes.</p> <p>19 Q. They didn't think it was fair</p> <p>20 to them. Right?</p> <p>21 A. Right.</p> <p>22 Q. So Mr. Klippen was doing some</p> <p>23 work on potentially setting up a program that</p> <p>24 the USDA would audit and verify compliance</p> <p>25 with that would not demand that 100 percent</p>	<p style="text-align: right;">610</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of people that wrote letters to USDA</p> <p>3 saying that they thought this was</p> <p>4 wrong for USDA to be used for a</p> <p>5 program that did not require the 100</p> <p>6 percent and did not -- the problem</p> <p>7 about it is that his program was -- we</p> <p>8 tried to get the information from the</p> <p>9 Freedom of Information Act, but it was</p> <p>10 redacted to a point you didn't really</p> <p>11 know what it was. So we had very</p> <p>12 little information about it other than</p> <p>13 it appeared that he had stolen much of</p> <p>14 his work from UEP's guidelines and</p> <p>15 then tweaked it some to their -- what</p> <p>16 they needed to do and so forth. Yes.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Mr. Gregory, focusing on what</p> <p>19 you did personally, once you learned that Mr.</p> <p>20 Klippen and others were looking into this</p> <p>21 program, you did what you could to stop it.</p> <p>22 Correct?</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question.</p> <p>25 THE WITNESS: I'm not sure that</p>
<p style="text-align: right;">609</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 of the company's facilities be dedicated to</p> <p>3 the program's guidelines. Correct?</p> <p>4 A. USDA has a program called</p> <p>5 Process Verified, and it was never intended</p> <p>6 as an animal welfare program. It is a</p> <p>7 marketing program where virtually any product</p> <p>8 that -- agriculture product you have, you can</p> <p>9 write your own specs or your own guidelines,</p> <p>10 and what they'll come out and do is audit it</p> <p>11 to be sure that you're meeting your own</p> <p>12 company's -- it is not an independent thing</p> <p>13 or anything else, it doesn't have to be</p> <p>14 science based or anything like that. So he</p> <p>15 designed a program that he then took to USDA</p> <p>16 to get the Process Verified seal. And USDA</p> <p>17 was not necessarily pleased about that, but</p> <p>18 they had no justification or jurisdiction for</p> <p>19 denying that.</p> <p>20 Q. And once you learned that this</p> <p>21 was happening, you did your very best to stop</p> <p>22 it from happening. Correct?</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question.</p> <p>25 THE WITNESS: There were numbers</p>	<p style="text-align: right;">611</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 I'm the only one. I think there were</p> <p>3 several.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. I just want -- no one is saying</p> <p>6 you were the only one. I just want to talk</p> <p>7 about what you did. You tried to stop it?</p> <p>8 A. We're trying to challenge USDA</p> <p>9 to make sure that if you're going to use a</p> <p>10 Process Verified Program, how can you -- how</p> <p>11 can you -- when you are auditing one program</p> <p>12 that requires 100 percent compliance of all</p> <p>13 hens, how can you justify putting your seal</p> <p>14 on a product that does not -- that only</p> <p>15 requires versus to be humane on some birds</p> <p>16 but not on others? How can USDA do that?</p> <p>17 Q. You contacted people at the</p> <p>18 USDA and expressed your view that this</p> <p>19 program was a bad idea. Right?</p> <p>20 A. Yes, I did, I'm sure.</p> <p>21 Q. You wrote multiple e-mails</p> <p>22 trying to convince the USDA not to follow</p> <p>23 through on this program. Correct?</p> <p>24 A. I'm not sure multiple e-mails,</p> <p>25 I don't know.</p>

73 (Pages 608 to 611)

<p style="text-align: right;">612</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. You went and had multiple</p> <p>3 in-person meetings with the USDA to try --</p> <p>4 A. I don't think that's true. I</p> <p>5 think I met with USDA, but I don't think I</p> <p>6 would call them multiple.</p> <p>7 Q. You only met with the USDA one</p> <p>8 time on this?</p> <p>9 A. I don't know. That's what I'm</p> <p>10 saying.</p> <p>11 Q. You had met with USDA at least</p> <p>12 one time to try to convince them not to</p> <p>13 follow this program. Correct?</p> <p>14 A. Yes, because I think that it is</p> <p>15 wrong for USDA to let their seal be used by a</p> <p>16 company that is not making those animal</p> <p>17 welfare improvements to 100 percent of their</p> <p>18 birds. Because, you see, who they're trying</p> <p>19 to sell this to is they are representing</p> <p>20 themselves as a company. So your customer</p> <p>21 out there assumes that if you got that logo,</p> <p>22 that you are doing this on all your</p> <p>23 production. And they may find out later that</p> <p>24 it's only on a few birds. We think that</p> <p>25 is -- we think that's miss -- that is</p>	<p style="text-align: right;">614</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 opposed to having to do it only on an all or</p> <p>3 nothing basis?</p> <p>4 A. Again, you need to show that to</p> <p>5 me. You're asking me for -- to remember a</p> <p>6 document that, you know, I need to -- you</p> <p>7 know.</p> <p>8 - - -</p> <p>9 (Exhibit Gregory-74, E-mail</p> <p>10 chain, Bates UE0808615 & UE0808616,</p> <p>11 was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Let me hand you what we've</p> <p>15 marked as Gregory-74. This is a document</p> <p>16 Bates stamped UE0808615 through 616.</p> <p>17 Why don't you go ahead and</p> <p>18 review this exchange.</p> <p>19 A. Well, first of all, I remember</p> <p>20 this because I'm writing to Ken because I</p> <p>21 thought we were friends and I thought we had</p> <p>22 been very good when he was an employee, and</p> <p>23 I'm now seeing him out there I think</p> <p>24 misrepresenting facts and trying to set up a</p> <p>25 new organization. And he is being</p>
<p style="text-align: right;">613</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 misguided. We think that it could</p> <p>3 potentially have the opportunity to destroy</p> <p>4 all the work that has been done by the</p> <p>5 Scientific Committee and others. It could be</p> <p>6 a -- create another miss -- another</p> <p>7 disrespect for the egg industry in total.</p> <p>8 Q. And you wrote to UEP members</p> <p>9 and UEA members and others telling them that</p> <p>10 you thought this program was a bad idea and</p> <p>11 should not go forward. Correct?</p> <p>12 A. If you've got a document of</p> <p>13 that, show it to me. I don't recall that.</p> <p>14 Q. You don't recall doing that?</p> <p>15 A. That's what I'm saying to you.</p> <p>16 I don't recall that, so show me the document.</p> <p>17 I may very well have done it, but I'm not</p> <p>18 going to agree to something that you're</p> <p>19 trying to tell me I did unless you show me a</p> <p>20 document.</p> <p>21 Q. Do you recall the USDA</p> <p>22 responding to you and saying from their point</p> <p>23 of view, there was no problem with certifying</p> <p>24 compliance with guidelines at a company for a</p> <p>25 portion of the production from the company as</p>	<p style="text-align: right;">615</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 disparaging to people that work for us, and</p> <p>3 he is mischaracterizing things, so I wrote to</p> <p>4 him and said, you know, that I was -- I'm</p> <p>5 disappointed and I thought we were once</p> <p>6 friends and co-workers, and this is now</p> <p>7 dividing the industry.</p> <p>8 So I'm -- so then, of course,</p> <p>9 he writes back to me and in your usual style,</p> <p>10 you have misrepresented what happened.</p> <p>11 Well -- and then he goes on and on.</p> <p>12 Q. This initial e-mail you just</p> <p>13 wrote to express your disappointment, you</p> <p>14 just happened to copy your legal counsel and</p> <p>15 dozens of other people. Right?</p> <p>16 A. Yes. These people here, I</p> <p>17 believe, were the Board of Directors.</p> <p>18 Q. And you accused -- so you copy</p> <p>19 your legal counsel and the Board of Directors</p> <p>20 this e-mail, put the subject line</p> <p>21 disappointed, you accuse Mr. Klippen of</p> <p>22 trying to divide the egg industry and destroy</p> <p>23 UEP. Right?</p> <p>24 A. Yes.</p> <p>25 Q. Not a very friendly e-mail?</p>

74 (Pages 612 to 615)

<p style="text-align: right;">616</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. But it was true.</p> <p>3 Q. Mr. Klippen didn't think it was</p> <p>4 true. Right?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. Calls for speculation.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Mr. Klippen responded and said,</p> <p>9 look, some UEP members have concerns about</p> <p>10 the 100 percent requirement, especially when</p> <p>11 they don't have customers demanding the</p> <p>12 program. Right?</p> <p>13 A. You know the result of all this</p> <p>14 is informing his organization he could not</p> <p>15 get anybody other than the Sparboe Company to</p> <p>16 join, nor could he get anybody other than the</p> <p>17 Sparboe Company, to my knowledge, maybe one</p> <p>18 other, to follow his VPC program. If it was</p> <p>19 so dam good, why -- and if everybody was so</p> <p>20 upset with the UEP and with the Animal</p> <p>21 Care -- our UEP certified program, why didn't</p> <p>22 they just run in droves like he is talking</p> <p>23 about people are concerned about. The fact</p> <p>24 of it is, he could not get any support.</p> <p>25 Q. And, Mr. Gregory, if it was so</p>	<p style="text-align: right;">618</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 was marked for identification.)</p> <p>3 - - -</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Now, I've handed you what we've</p> <p>6 marked Gregory-75. This is Bates stamped</p> <p>7 UE0217823 through 829.</p> <p>8 Can you identify this, at least</p> <p>9 the cover letter, the first portion of the</p> <p>10 document as a letter you wrote to UEP</p> <p>11 members, UEA members and friends on</p> <p>12 October 20, 2006, and to be precise, you</p> <p>13 co-signed it with Al Pope and Chad Gregory?</p> <p>14 A. I see that, yes.</p> <p>15 Q. That didn't happen very often</p> <p>16 where the three of you would co-sign a</p> <p>17 letter. Right?</p> <p>18 MS. LEVINE: Object to the form</p> <p>19 of the question.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 Probably not.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. And this is a long letter.</p> <p>24 Nearly five pages long. Right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">617</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 weak on the merits, why did you spend so much</p> <p>3 energy trying to stop it?</p> <p>4 A. Again, I'm trying to explain to</p> <p>5 you we have spent so much time trying to</p> <p>6 develop, trying to be responsive to a</p> <p>7 consumer issue and have put forth a program</p> <p>8 that is improving the welfare for 100 percent</p> <p>9 of the birds and a company ownership. They</p> <p>10 now are trying to put off a program that</p> <p>11 looks like it's better than UEP because it's</p> <p>12 USDA improved when, in fact, competition</p> <p>13 really doesn't even know what it is, not only</p> <p>14 that, it is believed that it doesn't have a</p> <p>15 requirement that that company or any company</p> <p>16 do this to all the birds. In other words,</p> <p>17 the program says I can be inhumane to some</p> <p>18 birds. And we think that is a bad thing to</p> <p>19 be learned in the industry and it could</p> <p>20 tarnish what we've been trying to do all this</p> <p>21 time to improve our public image and animal</p> <p>22 welfare.</p> <p>23 - - -</p> <p>24 (Exhibit Gregory-75, 10/20/06</p> <p>25 Letter, Bates UE0217823 - UE0217829,</p>	<p style="text-align: right;">619</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. It's all about how Mr.</p> <p>3 Klippen's idea to have a program that didn't</p> <p>4 demand 100 percent of all facilities comply</p> <p>5 with guidelines is a bad idea. Right?</p> <p>6 A. I would have to read it again</p> <p>7 to be sure of that.</p> <p>8 He says -- he acknowledges that</p> <p>9 there's an interest in creating a program to</p> <p>10 be competitive to a UEP certified program.</p> <p>11 We're not opposed to competitive programs.</p> <p>12 That's not the issue here. Anybody could do</p> <p>13 their own program. But what we're saying,</p> <p>14 don't do one that maybe at some point in time</p> <p>15 is going to come back and embarrass our</p> <p>16 industry again.</p> <p>17 Q. This letter is trying to</p> <p>18 convince all the people addressed to that,</p> <p>19 that this program is a bad idea. Right? Mr.</p> <p>20 Klippen's program.</p> <p>21 A. It's trying to say all the</p> <p>22 things that he has said about UEP or the</p> <p>23 reasons for creating another organization, or</p> <p>24 the reason for creating another animal</p> <p>25 welfare program and what I'm -- what we're</p>

75 (Pages 616 to 619)

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<p style="text-align: right;">620</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 trying to say here is that he's off base on</p> <p>3 this stuff.</p> <p>4 Q. Though by this point, of</p> <p>5 course, UEP couldn't even refer to its own</p> <p>6 program as an animal care program because it</p> <p>7 had to agree not to do that with the FTC.</p> <p>8 Right?</p> <p>9 A. And that's a good thing.</p> <p>10 Q. Now, if you --</p> <p>11 A. So don't imply that it's a bad</p> <p>12 thing. That was a good thing.</p> <p>13 Q. Now, if you look at the last</p> <p>14 two pages of Gregory-75, there's some</p> <p>15 handwriting on those pages, and I'll ask if</p> <p>16 you can identify those handwritten pages?</p> <p>17 THE WITNESS: Jan, this confirms</p> <p>18 things that I know I thought.</p> <p>19 MS. LEVINE: You can wait for</p> <p>20 the question and then you can answer</p> <p>21 Mr. Olson.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. So do you have an idea what</p> <p>24 these pages are?</p> <p>25 A. I know exactly what these pages</p>	<p style="text-align: right;">622</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 That was not the case. The man's name is</p> <p>3 Steve Manton and he's from England and he has</p> <p>4 been an export customer of U.S. Egg</p> <p>5 Marketers. So Steve Manton got some issues</p> <p>6 as it relates to regulation, I mean of</p> <p>7 certain papers that he needs out of USDA and</p> <p>8 all this and that. I said to him, I said,</p> <p>9 well, Steve, do you know Howard Magwire. He</p> <p>10 said, no, I don't. I said, well, Howard</p> <p>11 works for UEP and he was a former USDA</p> <p>12 employee in charge of much of this kind of</p> <p>13 stuff. Why don't you give Howard a call.</p> <p>14 So I learned from this meeting</p> <p>15 with Ken then that he has been doing some</p> <p>16 consulting work for Steve Manton unbeknownst</p> <p>17 to me. I didn't know anything about that. I</p> <p>18 thought I was just giving Steve some good</p> <p>19 advice or good people to contact. So Ken</p> <p>20 brings this up, that I am trying to take</p> <p>21 business away from him. And I understand he</p> <p>22 is now a consultant and he's doing this</p> <p>23 service for Steve.</p> <p>24 So I went prepared. And so Ken</p> <p>25 goes through all of this and he keeps talking</p>
<p style="text-align: right;">621</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 are.</p> <p>3 Q. What are they?</p> <p>4 A. They're my handwritten -- Ken</p> <p>5 Klippen walked into the office of McLeod</p> <p>6 Watkinson & Miller where he worked for us as</p> <p>7 our government relations representative. He</p> <p>8 said to Mike McLeod you tell Gene Gregory</p> <p>9 that if he doesn't quit calling on my -- quit</p> <p>10 trying to take business away from me, then</p> <p>11 I'm going to sue him. And so Mike called me</p> <p>12 and I said I don't know what the hell he's</p> <p>13 talking about.</p> <p>14 So I said, you call Ken and</p> <p>15 tell him let's meet and have lunch. So he</p> <p>16 did. And Ken said, well, I'm not going to</p> <p>17 attend unless I have my lawyer with me. And</p> <p>18 I said, that's fine, that's perfectly fine.</p> <p>19 Mike, you can go with me.</p> <p>20 So I picked a place to go have</p> <p>21 lunch. And Ken's lawyer turned about to be</p> <p>22 his brother from Minnesota. And so Ken then</p> <p>23 begins to talk about me having contacted a</p> <p>24 person in England that he did business with</p> <p>25 encouraging him to not do business with him.</p>	<p style="text-align: right;">623</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 and he keeps talking and all that kind of</p> <p>3 stuff. So I went prepared and I said, okay,</p> <p>4 now, Ken, I'm going to ask you some</p> <p>5 questions, and I'd -- all you have to do is</p> <p>6 say no. If you didn't do these things, just</p> <p>7 say no, and we'll just shake hands and part</p> <p>8 good friends. So I said, did you visit with</p> <p>9 USDA following UEP's 2000 annual meeting and</p> <p>10 tell USDA that UEP wanted all commodity</p> <p>11 purchased to be from UEP certified companies.</p> <p>12 Q. Why --</p> <p>13 A. Wait a minute. You asked me</p> <p>14 this. And I said, did you do that. He said,</p> <p>15 I'm not going to answer that. I said okay.</p> <p>16 Did you visit with USDA and</p> <p>17 tell USDA --</p> <p>18 Q. This is pretty rough for the</p> <p>19 court reporter when you read so quickly.</p> <p>20 Let's just pause at this first question. Why</p> <p>21 were you asking Mr. Klippen if he had said</p> <p>22 that to the USDA?</p> <p>23 A. There is a series of things</p> <p>24 that I know of that Ken Klippen has done to</p> <p>25 disparage UEP and what UEP is doing.</p>

76 (Pages 620 to 623)

<p style="text-align: right;">624</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. But, Mr. Gregory, you</p> <p>3 personally wrote to USDA saying they should</p> <p>4 only purchase from UEP certified companies.</p> <p>5 Right?</p> <p>6 A. But that's not the point you</p> <p>7 asked me. You asked me about this here.</p> <p>8 Q. Why were you asking Mr. Klippen</p> <p>9 if he had said that to USDA when you knew</p> <p>10 that you had done that yourself?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question. I think Mr. Gregory</p> <p>13 has answered your question.</p> <p>14 THE WITNESS: So you asked me</p> <p>15 about this and so I asked him, did you</p> <p>16 do this.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Wait, wait, wait.</p> <p>19 A. And I said, all you have to do</p> <p>20 is say no. All right.</p> <p>21 Q. Are you not going to answer my</p> <p>22 question?</p> <p>23 A. I'm going to answer the</p> <p>24 question that you started out, and that was</p> <p>25 about this series of things I had here.</p>	<p style="text-align: right;">626</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 one, he's saying no, no, no, I'm not going to</p> <p>3 answer that. And he elbows his brother who</p> <p>4 is sitting on the side and he says let's get</p> <p>5 the hell out of here. I am not going to take</p> <p>6 any more of this. And I say to him again,</p> <p>7 Ken, listen, we have been friends, I don't</p> <p>8 know what's going on here. All you've got to</p> <p>9 do is say no. If you walk out of here</p> <p>10 without saying no, then I assume that you're</p> <p>11 in the business now of trying to disparage</p> <p>12 UEP and our programs. And he just up and</p> <p>13 left.</p> <p>14 Q. How could you possibly say that</p> <p>15 to Mr. Klippen that you don't know what's</p> <p>16 going on here when you knew that behind Mr.</p> <p>17 Klippen's back you were working every angle</p> <p>18 with the USDA to try to shut down the program</p> <p>19 that he was trying to establish?</p> <p>20 A. That is absolutely untrue.</p> <p>21 Q. Well, let's look at some more</p> <p>22 documents.</p> <p>23 A. I don't care what it says.</p> <p>24 What we're challenging them is to make sure</p> <p>25 that the program is a credible program.</p>
<p style="text-align: right;">625</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. The question is whether you</p> <p>3 wrote this. You answered that.</p> <p>4 A. I answered that.</p> <p>5 Q. My question is this first</p> <p>6 question that you thought was significant</p> <p>7 about --</p> <p>8 A. That is a follow-up answer.</p> <p>9 You didn't allow me to finish.</p> <p>10 Q. -- why Mr. Klippen had --</p> <p>11 whether Mr. Klippen had said that UEP wanted</p> <p>12 all commodity purchases to be from UEP</p> <p>13 certified companies. Why were you asking Mr.</p> <p>14 Klippen that when you knew you personally had</p> <p>15 said that to the USDA?</p> <p>16 A. Yes, I said that, but my point</p> <p>17 is why was Ken Klippen going to USDA and</p> <p>18 discouraging USDA from buying eggs from UEP</p> <p>19 certified companies.</p> <p>20 Q. Let me hand you what's been</p> <p>21 marked --</p> <p>22 A. Whoa, bup, bup, bup, bup.</p> <p>23 So anyway, this list here, I go</p> <p>24 down through this list of things that he has</p> <p>25 said or done, and I -- after about the third</p>	<p style="text-align: right;">627</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. You're telling me in this</p> <p>3 meeting with Mr. Klippen you acted surprised?</p> <p>4 A. I am not going to be</p> <p>5 intimidated by what you're accusing me of.</p> <p>6 We'll response to the documents.</p> <p>7 Q. You acted surprised --</p> <p>8 A. Again, don't accuse me of</p> <p>9 things.</p> <p>10 Q. You suggested to Mr. Klippen</p> <p>11 you were surprised that he was upset about</p> <p>12 what you were doing?</p> <p>13 A. Because he is just a</p> <p>14 consultant. You know, this is none of his</p> <p>15 business. But he's in there trying to</p> <p>16 disparage UEP and our programs as to why USDA</p> <p>17 should not pay any attention to what UEP is</p> <p>18 asking.</p> <p>19 Q. Did you tell Mr. Klippen that</p> <p>20 you were having conversations with the USDA</p> <p>21 to try to get them not to use the Process</p> <p>22 Verified Program for Mr. Klippen's program?</p> <p>23 A. Let me do this before I answer</p> <p>24 that, can I ask you a question just a minute?</p> <p>25 No?</p>

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<p style="text-align: right;">628</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I just need an answer to my</p> <p>3 question.</p> <p>4 A. I need to ask you a question.</p> <p>5 Q. Go ahead.</p> <p>6 A. How many of these documents</p> <p>7 were provided by Ken Klippen to you and how</p> <p>8 much did he participate with the Humane</p> <p>9 Society of the United States in bringing</p> <p>10 documents to you to file a lawsuit against</p> <p>11 us?</p> <p>12 Q. I'm not aware of any of that</p> <p>13 happening.</p> <p>14 A. Now, come on. Come on. Some</p> <p>15 day or another I'm going to come right back</p> <p>16 at you with this stuff because I think I know</p> <p>17 the answers to these things. So don't hold</p> <p>18 him up as any saint in this deal.</p> <p>19 Q. What I'm aware of is document</p> <p>20 after document in your files --</p> <p>21 A. You also know more than that.</p> <p>22 Q. -- of you working every angle</p> <p>23 to shut down Mr. Klippen's program. And my</p> <p>24 question is --</p> <p>25 A. My God, he doesn't have a</p>	<p style="text-align: right;">630</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 on all your birds because next week my eggs</p> <p>3 might come up from a different house. They</p> <p>4 might come from here, might come from there.</p> <p>5 So it's -- you're misleading the customer</p> <p>6 when you do this and we don't need any of</p> <p>7 that anymore.</p> <p>8 Q. What's the basis for your view</p> <p>9 on what the customer assumes when they see a</p> <p>10 logo?</p> <p>11 A. Well, they're buying eggs from</p> <p>12 a company. They're not buying eggs from a</p> <p>13 particular chicken house. They expect that</p> <p>14 labeler to represent the company position and</p> <p>15 the company attitude about improving the</p> <p>16 welfare of animals.</p> <p>17 - - -</p> <p>18 (Exhibit Gregory-76, E-mail</p> <p>19 chain, Bates CM00727158 - CM00727162,</p> <p>20 was marked for identification.)</p> <p>21 - - -</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Let's look at Gregory-76 on</p> <p>24 this point, it's Bates stamped CM00727158 and</p> <p>25 goes through 162, and I'll ask if you can</p>
<p style="text-align: right;">629</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 program, he doesn't have a credible program.</p> <p>3 I don't care if he has a program. We're not</p> <p>4 afraid of competition. We want that</p> <p>5 competition to be legitimate. It's bad for</p> <p>6 the industry, the image of the industry after</p> <p>7 we've just worked all this time for half</p> <p>8 something -- if he wants to -- if he or</p> <p>9 anybody else wants to develop a program</p> <p>10 that's science based, that's based upon 100</p> <p>11 percent of the birds, more power to them.</p> <p>12 Q. So it's fine as long as it's</p> <p>13 the same as the UEP certified program?</p> <p>14 A. It doesn't have to be the same</p> <p>15 as UEP certified.</p> <p>16 Q. So it's fine as long as it</p> <p>17 demands the 100 percent rule?</p> <p>18 A. Let me tell you why. Because,</p> <p>19 see, when we go into the marketplace and XYZ</p> <p>20 company is selling a customer eggs, he's</p> <p>21 representing his company. He's not</p> <p>22 representing an individual house. Or an</p> <p>23 individual chicken. So the customer assumes</p> <p>24 that if you put a logo on there or if you say</p> <p>25 something about your sales, you're doing that</p>	<p style="text-align: right;">631</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 identify the main e-mail or the middle e-mail</p> <p>3 on the first page as you forwarding some</p> <p>4 correspondence to Dolph Baker that you had</p> <p>5 had with a gentleman named Craig Morris?</p> <p>6 A. Yes.</p> <p>7 Q. And Craig Morris is at the</p> <p>8 USDA. Right?</p> <p>9 A. Yes.</p> <p>10 Q. In this back and forth with Mr.</p> <p>11 Morris, you're making the same points to him</p> <p>12 that you're making to us now, that there's</p> <p>13 just no way that the USDA could certify any</p> <p>14 sort of program that does not extend to 100</p> <p>15 percent of a company's products because that</p> <p>16 just is completely illogical. Right?</p> <p>17 A. I don't know whether I need to</p> <p>18 read the background of it or not, but...</p> <p>19 MS. LEVINE: Go ahead and read</p> <p>20 it.</p> <p>21 THE WITNESS: If you go back to</p> <p>22 page 4, Klippen says that as such his</p> <p>23 program will allow producers to chose</p> <p>24 if they want to participate and also</p> <p>25 decide what percentage of their</p>

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<p style="text-align: right;">632</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 production they wish to be on the</p> <p>3 program based upon their customer</p> <p>4 demands.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. You made the argument to Mr.</p> <p>7 Morris just as you made it today, that that's</p> <p>8 completely unreasonable and will confuse</p> <p>9 customers and the USDA should reject it.</p> <p>10 Correct?</p> <p>11 A. I don't believe that USDA</p> <p>12 should be putting their seal on something,</p> <p>13 this guy has got ten chicken houses and they</p> <p>14 have verified this one house because that</p> <p>15 customer is going to need enough eggs out of</p> <p>16 that one house. So they verified that one</p> <p>17 house. You know, at one point in time that</p> <p>18 house goes out of production. The hens are</p> <p>19 sold. But, you know, they keep shipping the</p> <p>20 eggs to the customer. Now, does the customer</p> <p>21 get those Process Verified eggs today or do</p> <p>22 they get others that aren't. By that same</p> <p>23 token, that house, ten houses there has an</p> <p>24 egg belt where all the eggs are coming into</p> <p>25 one central processing plant and they're</p>	<p style="text-align: right;">634</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 products that are not organic. Is that what</p> <p>3 he said?</p> <p>4 Q. That a company can sell both</p> <p>5 organic eggs and nonorganic eggs.</p> <p>6 A. Right.</p> <p>7 Q. And the USDA can certify when</p> <p>8 eggs are organic and they're won't certify</p> <p>9 when they're not organic?</p> <p>10 A. It's the same way in our</p> <p>11 program. You can buy --</p> <p>12 Q. And they have no problem doing</p> <p>13 that?</p> <p>14 A. You can buy non-certified eggs</p> <p>15 and you can sell non-certified eggs.</p> <p>16 Q. Right. And the same company</p> <p>17 could sell both certified and non-certified</p> <p>18 eggs?</p> <p>19 A. Yes.</p> <p>20 Q. You can put that aside.</p> <p>21 A. We're talking about production</p> <p>22 side. Listen, let me --</p> <p>23 MS. LEVINE: Mr. Gregory --</p> <p>24 - - -</p> <p>25 (Exhibit Gregory-77, 8/3/07)</p>
<p style="text-align: right;">633</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 being, you know, sorted around back and all</p> <p>3 this and that. How do you know that the eggs</p> <p>4 now are -- that the customer thought he was</p> <p>5 buying is what he actually got.</p> <p>6 Q. You made all these arguments to</p> <p>7 Mr. Morris and he wrote back that he thought</p> <p>8 you were wrong and he said take USDA organic</p> <p>9 as an example. Right?</p> <p>10 A. Yes, he did.</p> <p>11 Q. "Can a company sell both</p> <p>12 organic and non organic products?"</p> <p>13 A. Yes.</p> <p>14 Q. Yes, they can. Are there those</p> <p>15 who purchase USDA Organic products out there</p> <p>16 that believe that they are more</p> <p>17 environmentally sustainable for this planet</p> <p>18 we live on? Yes, there are. Then it would</p> <p>19 beg the question, should AMS allow the U.S.</p> <p>20 Organic seal to go on products of companies</p> <p>21 that sell both USDA Organic and conventional</p> <p>22 products? He said, "The position of the</p> <p>23 Agency is that we do..."</p> <p>24 Right?</p> <p>25 A. They let the U.S. seal go on</p>	<p style="text-align: right;">635</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 Letter, Bates UE0218074 - UE0218076,</p> <p>3 was marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Let me hand you what we've</p> <p>7 marked as Gregory-77.</p> <p>8 A. I mean no disrespect to Ken</p> <p>9 Klippen, but we're in a lawsuit here. This</p> <p>10 is very hurtful to us.</p> <p>11 Q. Now, even just before we do 77,</p> <p>12 just on 76, you referred back to the</p> <p>13 beginning of the chain. And as I understand</p> <p>14 how this started is Mr. Klippen had sent a</p> <p>15 letter and you took a portion of that letter</p> <p>16 and copied it to these folks at the USDA,</p> <p>17 didn't include Mr. Klippen in any of this</p> <p>18 discussion and were basically attacking what</p> <p>19 he had said. That's how this started.</p> <p>20 Right?</p> <p>21 A. I'm making a direct quote from</p> <p>22 him.</p> <p>23 Q. Did you let Mr. Klippen know</p> <p>24 that you were doing this? Did you give him</p> <p>25 an opportunity to respond?</p>

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<p style="text-align: right;">636</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 A. I did not.</p> <p>3 Q. Let's look at 77. This is a</p> <p>4 document Bates stamped UE0218074 through 76.</p> <p>5 I'll ask if you can identify</p> <p>6 this as a letter that you wrote on August 3,</p> <p>7 2007, to a Lloyd Day at the Agricultural</p> <p>8 Marketing Service of the USDA?</p> <p>9 A. I don't recall it, but, yes, it</p> <p>10 looks like it's my letter.</p> <p>11 Q. And in this letter you're</p> <p>12 arguing that the Agricultural Marketing</p> <p>13 Service was making a grave error by</p> <p>14 permitting this program of Mr. Klippen's to</p> <p>15 go forward. Correct?</p> <p>16 A. I think that's what it says.</p> <p>17 But let me point out to you in the end, USDA</p> <p>18 allowed it, he developed his program, and as</p> <p>19 far as I know, they got no one else to join</p> <p>20 Sparboe in administer -- in implementing it.</p> <p>21 And as far as I know, they only got a limited</p> <p>22 amount of business in the retail market. So</p> <p>23 the program turned out to be not of value</p> <p>24 evidently, I don't know.</p> <p>25 - - -</p>	<p style="text-align: right;">638</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 next issue, we'll give you acknowledgment of</p> <p>3 things. Right?</p> <p>4 A. Yes.</p> <p>5 Q. Mr. Truex writes back saying</p> <p>6 that he wasn't upset, "Always will pay our</p> <p>7 share, just thought it would be good to</p> <p>8 mention nonmembers could also help pay the</p> <p>9 bill."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What's he referring to there,</p> <p>13 "nonmembers could also help pay the bill"?</p> <p>14 A. He was -- his company at the</p> <p>15 time, I think, was not a U.S. Egg Marketers</p> <p>16 member and he, like Sauder, were going to be</p> <p>17 a supporter by providing some eggs or some</p> <p>18 financial support or something. I think that</p> <p>19 is what this is about.</p> <p>20 MR. OLSON: So I'm pretty</p> <p>21 close -- I probably -- should we break</p> <p>22 for the day and then start again fresh</p> <p>23 tomorrow morning?</p> <p>24 THE WITNESS: I thought I was</p> <p>25 done with you. I'm serious.</p>
<p style="text-align: right;">637</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Gregory-78, E-mail</p> <p>3 chain, Bates UE0804959, was marked for</p> <p>4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. OLSON:</p> <p>7 Q. I've handing you what's been</p> <p>8 marked Gregory-78. This is a document Bates</p> <p>9 stamped UE0804959. I'll ask if you can</p> <p>10 identify this as the e-mail exchange you</p> <p>11 participated in on November 18, 2006?</p> <p>12 A. It appears so.</p> <p>13 Q. It's with a person named Ron.</p> <p>14 Do you know who that person is?</p> <p>15 A. That is Ron Truex, who is the</p> <p>16 president of Creighton Brothers.</p> <p>17 Q. And you had written to</p> <p>18 Mr. Truex on November 17, 2006, that you</p> <p>19 heard that he was upset that Creighton wasn't</p> <p>20 mentioned in a story about an export. Right?</p> <p>21 A. Yes.</p> <p>22 Q. And you're referring to a</p> <p>23 United Voices' story. Correct?</p> <p>24 A. I must be.</p> <p>25 Q. And you say basically in the</p>	<p style="text-align: right;">639</p> <p>1 GENE W. GREGORY - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: You're very close,</p> <p>3 and you may be. I just --</p> <p>4 MS. LEVINE: Let's take a couple</p> <p>5 minute break.</p> <p>6 THE WITNESS: You've upset me a</p> <p>7 couple times this afternoon by you</p> <p>8 have brought people in that I've had</p> <p>9 to talk about that I thought were</p> <p>10 friends and I don't like having to</p> <p>11 comment on individuals.</p> <p>12 MS. LEVINE: Why don't we go off</p> <p>13 the record for a minute, let counsel</p> <p>14 just talk about timing.</p> <p>15 VIDEOGRAPHER: The time is</p> <p>16 approximately 3:43 p.m. We're off the</p> <p>17 record.</p> <p>18 - - -</p> <p>19 (A recess was taken.)</p> <p>20 - - -</p> <p>21 MS. LEVINE: We're going to</p> <p>22 conclude for today and we will start</p> <p>23 tomorrow morning at 8:00 a.m.</p> <p>24 Off the record.</p> <p>25 - - -</p>

80 (Pages 636 to 639)

640	1 GENE W. GREGORY - HIGHLY CONFIDENTIAL 2 (Witness excused.) 3 - - - 4 (Deposition concluded at 4:04 5 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	642	1 2 INSTRUCTIONS TO WITNESS 3 4 Please read your deposition over 5 carefully and make any necessary corrections. 6 You should state the reason in the 7 appropriate space on the errata sheet for any 8 corrections that are made. 9 After doing so, please sign the errata 10 sheet and date it. 11 You are signing same subject to the 12 changes you have noted on the errata sheet, 13 which will be attached to your deposition. 14 It is imperative that you return the 15 original errata sheet to the deposing 16 attorney within thirty (30) days of receipt 17 of the deposition transcript by you. If you 18 fail to do so, the deposition transcript may 19 be deemed to be accurate and may be used in 20 court. 21 22 23 24 25
641	1 2 CERTIFICATE 3 4 I do hereby certify that I am a Notary 5 Public in good standing, that the aforesaid 6 testimony was taken before me, pursuant to 7 notice, at the time and place indicated; that 8 said deponent was by me duly sworn to tell 9 the truth, the whole truth, and nothing but 10 the truth; that the testimony of said 11 deponent was correctly recorded in machine 12 shorthand by me and thereafter transcribed 13 under my supervision with computer-aided 14 transcription; that the deposition is a true 15 and correct record of the testimony given by 16 the witness; and that I am neither of counsel 17 nor kin to any party in said action, nor 18 interested in the outcome thereof. 19 20 WITNESS my hand and official seal this 21 8th day of July, 2013. 22 23 24 25	643	1 2 ACKNOWLEDGMENT OF DEPONENT 3 I have read the foregoing transcript of 4 my deposition and except for any corrections or 5 changes noted on the errata sheet, I hereby 6 subscribe to the transcript as an accurate record 7 of the statements made by me. 8 9 10 11 GENE W. GREGORY 12 13 SUBSCRIBED AND SWORN before and to me 14 this ____ day of _____, 20____. 15 16 17 18 NOTARY PUBLIC 19 20 My Commission expires: 21 22 23 24 25

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644

1 ERRATA SHEET

2 IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION

3 DATE: JUNE 26, 2013

4 PAGE LINE CORRECTION AND REASON

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25 (DATE) GENE W. GREGORY

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A			
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